(25,923)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 486.

JOHN KENNY, PETITIONER,

vs.

LABAN MILES AND JOHN L. BIRD, ADMINISTRATOR OF THE ESTATE OF LAH-TAH-SAH, DECEASED.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

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1 Filed Sep-. 28, 1915. Wililam H. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 7708.

JOHN KENNY, Plaintiff in Error,

vs.

LABAN MILES and JOHN L. BIRD, Administrator of the Estate of Lah-tah-sah, Osage Allottee No. 256, Deceased, Defendants in Error.

Petition in Error.

The said John Kenny, Plaintiff in Error, complains of the said Defendants in Error, in that in an action pending in the District Court of Osage County, Oklahoma, entitled, "In the Matter of the Estate of Lah-tah-sah, Osage Allottee, #256, deceased, on appeal from the county court to the district court," the said Laban Miles, together with the said John L. Bird, Administrator of the estate of Lah-tah-sah, Osage Allottee #256, deceased, at the regular term of the district court of Osage County, State of Oklahoma, on towit, the 2nd day of April, 1914, recovered a judgment by the consideration of said Court against this plaintiff in error, overruling the demurrer of plaintiff in error to the plea of res adjudicata of the said Laban Miles, defendant in error, and striking out portions of the answer of said John Kenny to the plea of res adjudicata of said Laban Miles, and adjudging and decreeing that the final account of said John L. Bird, Adminstrator of the estate of said Lah-tah-sah, Osage Allottee #256, deceased, be approved, and approving such final account, and adjudging and decreeing that said Laban Miles was the surviving husband, and one of the heirs of said Lah-tah-sah, Osage Allottee #256, deceased, and distributing the estate of said Lah-tah-sah, Osage Allottee #256, deceased, one-half to the said Leban Miles, and one-half to Plaintiff in Error; and, affirming the judgment of the county court of Osage County, Okla-
2 homa, in said matter, rendered on, towit, the 14th day of March, 1914; and overruling the motion of said John Kenny for a new trial, all as shown more fully by the original case made, duly settled, signed and filed in said cause in the District court of Osage County, Oklahoma, which said case made is attached hereto, marked "Exhibit A" and made a part of this petition in error; and by a full, true and correct transcript of record in said cause, duly certified, and hereto attached, marked "Exhibit B" and made a part of this petition in error.

This plaintiff in error herein avers that there is error in said record, judgment and proceedings, in this, towit:

(1) The said district court of Osage County, Oklahoma, erred in

overruling the demurrer of plaintiff in error to the plea of res adjudicata, of said Laban Miles, which overruling was duly excepted to by plaintiff in error at the time.

(2) The said district court committed error of law in sustaining the motion of said Laban Miles, striking out paragraph 2 of the answer of plaintiff in error, to which plaintiff in error excepted at the time.

(3) The said district court committed error of law in sustaining the motion, striking out paragraph 3-*a* of the answer of plaintiff in error, to which plaintiff in error excepted at the time.

(4) The said district court committed error of law in sustaining the motion, striking out paragraph 3-*b* of the answer of plaintiff in error, to which plaintiff in error excepted at the time.

(5) The said district court committed error of law in sustaining said motion, striking out paragraph 3-*c* of the answer of plaintiff in error, to which plaintiff in error excepted at the time.

3 (6) Said district court committed error of law at the trial, and erred, in excluding competent, relevant and material testimony offered by plaintiff in error in his behalf, to which ruling of the court plaintiff in error excepted at the time.

(7) The said district court committed error of law at the trial in admitting, and did admit, incompetent, irrelevant and immaterial testimony, offered by the said Laban Miles, and objected to by plaintiff in error at the time, and to which plaintiff in error at the time excepted.

(8) For errors of law occurring at the trial, and duly excepted to by plaintiff in error at the time.

(9) For the reason that the findings, judgment and decree of said court are not sustained by sufficient evidence, but are contrary to the evidence.

(10) For the reason that the decree, decision and findings of the court are contrary to law.

(11) The said district court erred in sustaining the plea of res adjudicata set up and pleaded by the said Laban Miles; and erred in refusing and denying the plaintiff in error the right to introduce testimony to show that the said Laban Miles was never married to the said Lah-tah-sah, deceased, and that the said Laban Miles is not the surviving husband of said Lah-tah-sah, deceased, and that the said Laban Miles is not an heir at law of said Lah-tah-sah, deseased.

(12) The said district court committed errors of law at the trial in that the said plaintiff in error was not granted a trial de novo in said district court, and was not granted a trial of the rights of heirs to the estate and property of said deceased, to all of which plaintiff in error excepted at the time.

(13) The said district court committed error of law at the trial in refusing, and did refuse, to hear testimony for the purpose of determining the legal heirs of said deceased, and in holding

4 that the issues in that respect were concluded by the findings and judgment set up and contained in the writing marked "Laban Miles' Exhibit 4," a former judgment of the district court

of said county, to all of which plaintiff in error excepted at the time.

(14) The said district court committed error of law at the trial in affirming the judgment, in said matter, of the county court of Osage County, Oklahoma.

(15) The said district court committed error at the trial in not finding a judgment decreeing that plaintiff in error was the sole and only heir at law of the said deceased, and entitled to the whole of said estate.

(16) Said district court committed error of law and erred in overruling the motion of plaintiff in error for a new trial, to which plaintiff in error excepted at the time.

Wherefore, Plaintiff in error prays that said judgment and decree so rendered may be reversed, set aside and held for naught, and that plaintiff in error have a new trial hereof, and be decreed the sole and only heir at law of the said deceased and entitled to the whole of said estate; and that plaintiff in error have all other and further relief to which he may be entitled.

P. H. VAN WINKLE,
E. R. HASTINGS,
Attorneys for Plaintiff in Error.

5 & 6 In the District Court of Osage County, State of Oklahoma.

No. 2372.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee, No. 256, Deceased, on Appeal from the County Court to the District Court.

Case-Made.

Be it known that one John Kenny, took an appeal to the District Court of the Twenty-fourth Judicial District of Oklahoma in and for Osage County, Oklahoma, from the proceedings, orders, decrees, and judgments of the County Court of Osage County, Oklahoma, theretofore had, made and rendered by said County Court, in favor of Laban Miles in the above entitled cause, and that in pursuance of such appeal and on, towit, April 1st, 1914, duly certified copies of the notice of such appeal, and of the appeal bond, and of the orders, decrees and judgments appealed from, and of the minutes, records, papers and proceedings in said case, all of which are hereinafter referred to as the transcript, and as shown more fully in said transcript, were filed in the District Court of the Twenty-fourth Judicial District of Oklahoma, in and for Osage County, Oklahoma, in the office of the clerk of said court, which said transcript and certified copies, together with the indorsements thereon, were and are in the words and figures following, towit:

Exhibit A. District Court, State of Oklahoma, County of Osage, Pawhuska, Okla. Filed Jul- 12, 1915. Thos. Leahy, Court Clerk.

7 In the County Court of Osage County, Oklahoma.

No. 389.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee, No. 256, Deceased.

Transcript on Appeal to the District Court.

8 *Petition for Letters of Administration.*

In the County Court.

THE STATE OF OKLAHOMA,
Osage County, ss:

Roll No. —.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee, No. 256, Deceased.

Comes now Laban Miles, and shows to the Court that Lah-tah-sah departed this life at Pawhuska, in the County of Osage and State of Oklahoma, on or about the 19th day of August, A. D., 1908.

The said decedent was at the time of *his* death a resident of Pawhuska, in the County of Osage and State of Oklahoma.

The decedent left estate in the County of Osage and State of Oklahoma. That due search and inquiry has been made to ascertain if decedent left a will but none has been found, and according to the best information and belief of petitioner, said decedent died intestate.

The general character and probable value of the estate left by decedent is as follows: Lands allotted to her as a member of the Osage Tribe of Indians, in Osage County, Oklahoma, amounting to abou' 660 acres of the approximate yearly rental of $500.00, and tribal trust funds belonging to her as a member of such tribe, and to her credit in the Treasury of the United States, together with oil, gas and other mineral annuities of the approximate yearly income of $600.00.

That the names, ages and residences of the heirs at law of the decedent so far as known to your petitioner, are as follows: Laban Miles, Husband, age 50 years, residence Pawhuska, Okla-
9 homa; John Kenney, Son, age 26 years, residence Fairfax, Oklahoma.

That your petitioner is husband of said decedent and is advised and believes that he is entitled to administer upon said estate. He therefore recommends and requests that John Bird be appointed by the Court as such administrator.

That John Bird for whom letters of administration are herein

prayed is a resident of Osage County, State of Oklahoma, with post-office address at Pawhuska, Oklahoma, in said County.

Wherefore, petitioner prays that letters of administration issue to said John Bird.

LABAN MILES, *Petitioner.*

GRINSTEAD, MASON & SCOTT,
Att'ys for Petitioner.

Endorsed on the back: No. 389. In the Matter of the -State of Lah-tah-sah, Deceased. Petition for Letters of Administration. Filed in the County Court, Osage County, Okla., this 8th day of July, 1912. J. F. Jones, Clerk County Court.

PAWHUSKA, OKLAHOMA, July 8, 1912.

I hereby acknowledge service of the within petition and the receipt of a true copy thereof, the date first above written.

W. M. PETERSON,
Supervisor in Charge, Osage Agency.

10 *Notice of Application for Appointment of Administrator.*

In the County Court, County of Osage, State of Oklahoma.

In the Estate of LAH-TAH-SAH, Osage Allottee, No. 256, Deceased.

The State of Oklahoma to the Heirs Next of Kin, Superintendent of the Osage Agency and Creditors of the said Lah-tah-sah, Deceased:

You are hereby notified that Laban Miles has applied for letters of administrator of said estate to be granted to John Bird, and that said petition will be heard at the Court room of said Court in the city of Pawhuska, in said County and State, on Thursday, the 8th day of August, 1912, at 9:00 o'clock A. M., at which time you may appear and show cause, if any you have, why said petition should not be granted.

Witness my hand and the seal of said Court hereunto affixed this 9th day of July, 1912.

[SEAL.]

J. F. JONES,
Clerk County Court.

STATE OF OKLAHOMA,
Osage County, ss:

I, the undersigned, do solemnly swear that on the 9th day of July, 1912, I posted true copies of the within notice in three public places in Osage County, as follows, one at the Court House, in the City of Pawhuska, one at old Agency Bldg., Pawhuska, and one at City Hall, Pawhuska.

C. S. COOKSEY.

Subscribed and sworn to before me this 9th day of July, A. D., 1912.

[SEAL.] C. T. BENNETT,
County Judge.

11 STATE OF OKLAHOMA,
Osage County, ss:

I, the undersigned, do solemnly swear that on the 9th day of July, 1912, I deposited in the postoffice copies of the within notice, postage prepaid, and addressed to John Kinney, at Fairfax, Okla., at their several places of residence, and that said persons are all of the heirs of the within named decedent.

PAUL B. MASON.

Subscribed and sworn to before me, this 9th day of July, 1912.

[SEAL.] J. F. JONES,
Clerk County Court.

Fees 80¢.

Endorsed on back: No. 389. In the matter of the estate of Lah-tah-sah, Deceased. Notice of Application for Appointment of Administrator. Filed in County Court, Osage Co., Okla., this 9th day of July, 1912. Andrew Joyce, Deputy Clerk County Court.

12 STATE OF OKLAHOMA,
Osage County:

In the County Court of Osage County, State of Oklahoma.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee, No. 256, Deceased.

Petition for Letters of Administration

Order for Hearing.

Now, on this 9th day of July, 1912, Laban Miles, having filed in this Court his petition alleging that Lah-tah-sah died intestate on or about the 19th day of August, 1908, leaving property within the jurisdiction of this Court, and praying for the appointment of John Bird as Administrator of said estate.

It is ordered that said petition be and hereby is set for hearing on the 8th day of August, 1912, at the hour of 9 o'clock A. M., and that notice thereof be given by posting notices of such hearing at three public places in said Osage County, Oklahoma, one of which shall be posted up at the County Court house door of this Court, in the City of Pawhuska, Oklahoma, and two in two other public places, and by mailing a notice, with postage prepaid to each of the heirs at law of said decedent as required by law.

[SEAL.] C. T. BENNETT,
County Judge.

Endorsed on back: No. 389. In the Matter of the State of Lah-tah-sah, Deceased. Order for Hearing Petition for Letters of Administration. Filed July 9, 1912. J. F. Jones, Clerk County Court. Recorded in Administrator's Record, Book 1, page 420.

13 *Order Appointing Administrator.*

THE STATE OF OKLAHOMA,
Osage County, ss:

In the County Court.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee, No. 256, Deceased.

Now, on this 17th day of August, 1912, there coming on for hearing the petition of Laban Miles for the appointment of John Bird, as administrator of the estate of Lah-tah-sah, Deceased, and petitioner appearing "A" in person and by Grinstead, Mason & Scott, his attorneys, and it being first proven that notice of this hearing has been given by posting of notice for 10 consecutive days in the three public places in Osage County, Oklahoma, one of which was at the County Court house door in the city of Pawhuska, and the last on the 9th day of July, and by mialing copies of said notice on the — day of —— postage prepaid, addressed to the heirs at law of said decedent, resident of this State, so far as known to petitioner, and the Court having heard the evidence offered in support of said petition. "B."—and being fully advised in the premises.

It is ordered, That John Bird be and hereby is appointed administrator of the estate of Lah-tah-sah, Deceased, and that letters of Administration issue to said John Bird upon his taking and subscribing the oath required by law, and executing a bond to the State of Oklahoma, in the sum of Fifteen Hundred & No/100 Dollars, with sureties approved by the Judge of said Court as required by law.

[SEAL.]

C. T. BENNETT,
County Judge.

Endorsed on back: No. 389. In the Matter of the Estate of Lah-tah-sah, Deceased. Order Appointing Administrator. Filed Sep. 9" 1912. J. F. Jones, Clerk County Court. Recorded in Administrator's Record Book 1, page 429.

14 *Letters of Administration.*

STATE OF OKLAHOMA,
Osage County, ss:

In the County Court.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee, No. 256, Deceased.

John Bird is hereby appointed Administrator of the estate of Lah-tah-sah, Deceased.

Witness: The hand of C. T. Bennett, Judge of the County Court of Osage County, State of Oklahoma, with the seal thereof affixed the 20th day of November, 1912.

[SEAL.] C. T. BENNETT,
County Judge.

STATE OF OKLAHOMA,
Osage County, ss:

I, John Bird, do solemnly swear that I will perform according to law, the duties of Administrator of the estate of Lah-tah-sah, Deceased, so help me God.

JOHN BIRD.

Subscribed and sworn to before me this 14th day of November, 1912.

[SEAL.] S. S. GOEHRING,
Notary Public.

My Commission expires March 9, 1916.

Endorsed on back: No. 389. In the Matter of the Estate of Lah-tah-sah, Deceased. Letters of Administration. Filed November 29, 1912. Andrew Joyce, Deputy Clerk County Court. Recorded in Administrator's Record Book 1, page 420.

15 In the County Court of Osage County, Oklahoma, Sitting at Pawhuska.

In the Matter of the Estate of LAH-TAH-SAH, Deceased, Osage Allottee, No. 256.

Notice to Creditors.

All persons having claims against Lah-tah-sah, Osage Allottee, No. 256, deceased, are required to present the same with necessary vouchers to the undersigned Administrator, at his office in the Citizens

National Bank of Pawhuska, Oklahoma, within four months of the date hereof, or the same will be forever barred.

Dated Pawhuska, Oklahoma, December 14, 1912.

JOHN L. BIRD,
Administrator.

Endorsed: Received this writ on the 16th day of December, 1912, and executed the same by posting in three publice places in Pawhuska, one at Court House door, one at City Hall, one at old Agency Bldg., (within named defendants) this 16 day of Dec. 1912. Fee 80¢. H. M. Freas, Sheriff. C. S. Cooksey, Deputy.

Endorsed: No. 389, Estate of Lah-tah-sah, Deceased. Notice of hearing and Proof of Posting. Filed in County Court, Osage Co., Okla., this 16th day of December, 1912. Andrew Joyce, Deputy Clerk County Court.

16 In the County Court.

Estate of LAH-TAH-SAH, Deceased.

We, the undersigned, W. E. Savage, J. W. Soderstrom and John A. Gardner, of the above estate, make and return the following true and correct inventory of all the Real Estate and all the goods, chattels, rights, credits and estate of Lah-tah-sah, Allottee 256, deceased, except the homestead, which have come to my possession or knowledge.

Real Estate.

N. W. ¼ Sec. 26, 24, 4, Homestead, App. Value.....	$2,400.00
East ½ of Section 30, Township 28, Range 9, containing 320 acres, App. Value.....	$960.00
Lot 3, E. ½ of S. W. ¼ of N. W. ¼, S. E. ¼ of N. W. ¼ of Sec. 4, Township 20, Range 10, containing 100.12 acres	$300.00
N. ½ of S. E. ¼ of Section 4, Township 20, Range 10, containing 80 acres, Appraised value.....	$240.00
All North and East of the Indian Meridian in Osage County, Oklahoma.	
Total	$1,500.00 2,400.00

Personal Property.

Cash on hand	$210.00

17 Dated this 15th day of January, 1914.

JOHN L. BIRD,
Administrator.

Oath of Executor or Administrator.

STATE OF OKLAHOMA,
Osage County, ss:

John L. Bird, being first duly sworn, says. That he is administrator of the estate of Lah-tah-sah, deceased:

That the above inventory by him made contains a true statement of all the estate of said decedent, except the homestead, that has come to his knowledge and possession and particularly all of the moneys belonging to said decedent, and of all just claims of said decedent against Lah-tah-sah.

JOHN L. BIRD,
Administrator.

Subscribed and sworn to before me this 24th day of January, A. D., 1914.

[SEAL.]

C. E. LAKE,
Notary Public.

My Commission expires Mar. 7, 1915.

Order Appointing Appraisers.

In the County Court in and for Osage County, State of Oklahoma.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee, 256, Deceased.

Now, on this 7th day of January, 1914, it is hereby ordered that W. E. Savage, J. W. Soderstrom, John A. Gardner, of Osage County, State of Oklahoma, be and are hereby appointed appraisers of the estate of Lah-tah-sah, Allottee 256, deceased, within the County of Osage, in said State; and are hereby directed to view and appraise said estate, and make return of said appraisement as provided by law.

[SEAL.]

CHARLES R. GRAY,
Special County Judge.

18 STATE OF OKLAHOMA,
Osage County, ss:

I, Belva L. Moore, Clerk of the County Court in and for the County and State aforesaid do hereby certify *that* the above and foregoing to be a true copy of the original thereof, as the same appears on record in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, this — day of January, 1914.

[SEAL.]

BELVA L. MOORE,
Clerk of the County Court.

Oath of Appraisers.

STATE OF OKLAHOMA,
Osage County, ss:

I do solemnly swear that I will truly, honestly, and impartially appraise the property exhibited to me as belonging to the estate of Lah-tah-sah, R. No. 256, deceased, according to the best of my knowledge and ability and that I am disinterest- in said estate. So help me God.

J. W. SODERSTROM,
W. E. SAVAGE,
JOHN A. GARDNER,
Appraisers.

Subscribed and sworn to before me this 15th day of Jany. A. D., 1914.

[SEAL.] BELVA L. MOORE,
Clerk C. Court.

Certificate of Appraisers.

We, the undersigned, Appraisers, do hereby certify, that pursuant to the annexed warrant to us directed, we have appraised all the property described and mentioned in the above inventory, which has been to us exhibited, setting down opposite each item in said inventory, in figures, the value in money, as by us determined.

19 Witness our hands, this 15th day of January, A. D., 1914.

J. W. SODERSTROM,
W. E. SAVAGE,
JOHN A. GARDNER,
Appraisers.

Bill of Appraisers.

Estate of Lah-tah-sah, Deceased, to —— ——, Appraisers, Dr.

To compensation for services appraising said Estate, as follows:

One day, at $2.00 per day each	$6.00
Necessary disbursements, as follows: Board	4.50
	$10.50

STATE OF OKLAHOMA,
Osage County, ss:

J. W. Soderstrom, W. E. Savage, and John A. Gardner, the appraisers within named, being duly sworn, each for himself says, that the foregoing bill of items is correct and just, and that the services have been rendered and expenses incurred as therein set forth.

J. W. SODERSTROM, 3.50,
W. E. SAVAGE, 3.50,
JOHN A. GARDNER, 3.50,
Appraisers.

Subscribed and sworn to before me this 15th day of Jan'y A. D. 1914.

[SEAL.] BELVA L. MOORE,
Clerk County Court.

Endorsed on back: No. 389. General Inventory and Appraisement. In the County Court, County of Osage. In the matter of the estate of Lah-tah-sah, deceased. Filed this 28th day of Jan'y, 1914. Belva L. Moore, Clerk County Court. Service of within paper and receipt of copy thereof, acknowledged this — day of Jan. 1914. James A. Carroll, Supt. Osage Agency, per F. A. B.

20 *Annual or Final Account of Administrator or Executor.*

STATE OF OKLAHOMA,
Osage County, ss:

In the County Court of said County.

To the Judge of said Court:

To the undersigned, as the Administrator of the Estate of Lah-tah-sah, Osage Allottee, No. 256, deceased, respectfully submit the following as a full and correct account and report of his administration as such Admr., from November 20, 1912, to the 23rd day of January, 1914, which account exhibits not only the debts which have been paid, but also contains a statement of all the debts which have been presented and allowed during the period embraced in this account.

I charge myself with the following, towit:

Date. Month	day	year.	Items of receipts.	Total amount.
Dec.	11	1912.	Lease.	$240.00
Total amount of moneys received or col.				$240.00

Contra.

I ask myself to be credited with the following payment to creditors of deceased, as per voucher herewith submitted.

Items Paid Out.

Nov. 20, 1912.	Premium on surety bond.....	$15.00
Nov. 20, 1912.	" " " "	$15.00
Total amount	Received.....	$240.00
" "	Paid out	30.00
	Balance due.....	$210.00

(Signed) JOHN L. BIRD.

STATE OF OKLAHOMA,
Osage County, ss:

John L. Bird, being duly sworn, on oath says, that he has read the foregoing account and report of his administration, as the Admr. of the estate of Lah-tah-sah, Osage Allottee 256, deceased,
21 and knows the contents thereof, and that the same are true and correct.

JOHN L. BIRD.

Subscribed and sworn to before me, this 24th day of Jan'y, 1914.
[SEAL.]
D. F. LAKE,
Notary Public.

My commission expires March 7, 1915.

Your administrator (executor) further reports that the debts and claims against said estate have all been paid, leaving the above balance to be distributed between the parties lawfully entitled thereto. Your administrator therefore petitions the Court to determine and find the heirs of said estate, which he is informed and believes to be the following named persona *dne* entitled to said estate as follows:
Laban Miles, surviving husband, one-half,
John Kenney, son, one-half,
and moves the court that said heirs be determined and * * * be allowed to make distribution of said estate, and take receipts therefor, and present the same to the Court and be discharged; all of which is respectfully submitted.

JOHN L. BIRD.

Subscribed and sworn to before me this 24th day of January, A. D., 1914.
[SEAL.]
D. F. LAKE,
Notary Public.

My commission expires Mar. 7, 1915.

Statement of Claims Presented and Allowed.

Name of creditor.	Nature of claim.	Amount, etc.
	None.	

Total amount of claims allowed, none.
Very respectfully submitted, this 24 day of Jan. 1914.
JOHN L. BIRD,
Administrator.

Endorsed on back: No. 389. Annual or Final Account of Administrator or Executor. In County Court of Osage County, Oklahoma. In the matter of the estate of Lah-tah-sah, deceased. Final account of John L. Bird, Adm'r. Filed Jan'y 28, 1914. Belva L. Moore, Clerk. Service of within account and receipt of copy thereof acknowledged this 15th day of Jan. 1914. James A. Carroll, Supt. Osage Agency, per F. A. B.

22 In the County Court of Osage County, Oklahoma.

In the Matter of the ESTATE OF LAH-TAH-SAH, Deceased.

Comes now John Kinney, son of the decedent, and alleges that he is the sole and only heir at law of said Lah-tah-sah, that he is the son of such decedent, that Laban Miles is not an heir of said decedent; and this said John Kinney objects and excepts to the final report of the administrator herein in that said report suggests that Laban Miles is an heir of such decedent, when in truth and in fact he is not.

Wherefore, the said John Kinney prays that this court inquire, ascertain, and determine that the said Laban Miles is not an heir and has no interest in said estate; and that said John Kinney is the sole and only heir and that the whole of said estate be distributed to him and that said report be amended accordingly.

JOHN KINNEY,
By JOHN EMBRY,
His Attorney.

Endorsed: Filed Feb. 28, 1914. Belva L. Moore, Clerk County Court.

Service accepted this 28th day of Feb. 1914.
JAMES A. CARROLL,
Sup't Osage Agency,
By F. A. BAKER.

23 STATE OF OKLAHOMA,
Osage County, ss:

In County Court.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee, No. 256, on Hearing of Final Account of Administrator.

Plea of Res Adjudicata.

Comes now Laban Miles and alleges and states that on the 25th day of April, 1913, the District Court of Osage County, Oklahoma rendered a judgment in the case of Laban Miles, plaintiff, versus John Kenny, defendant, in case No. 1896 in said Court, by which judgment the heirs of the estate of Lah-tah-sah, Osage Allottee No. 256, deceased, were ascertained and determined. A copy of said judgment is hereto attached, marked "Exhibit A" and made a part hereof; that in said judgment the validity of the marriage of said Laban Miles and said Lah-tah-sah, deceased, was adjudicated; that the time during which an appeal might have been taken from said judgment of the District Court has long since expired; that no appeal from said judgment has been taken; that said John Kenny appeared

in person and by Hargis & Conwall, his attorneys, at the trial in the above entitled cause wherein said judgment was rendered and participated in the trial thereof, which said trial extended over a period of five days and many witnesses were called by each of the respective parties, and much evidence offered and submitted by the respective parties upon which said judgment was based and rendered. That said Laban Miles and John Kenny are the only parties claiming any interest in said estate. That the subject-matter involved in the District Court judgment was the same as that herein involved as relating to the validity of marriage and determination of ownership; that on Sept. 12, 1908, M. L. Garrett was appointed Administrator of the estate of said Lah-tah-sah, deceased, and fully administered
24 upon the estate, paid all debts and was discharged as such administrator on April 5, 1910.

By reason whereof said Laban Miles alleges that the matter of the determination of the legal heirs of said Lah-tah-sah, deceased, has been fully adjudicated and all matters and claims relating thereto have become and are res adjudicata, and said Laban Miles pleads the same as a bar to the readjudication thereof by this Court and alleges that this court has no jurisdiction thereof.

WHITE & WIDDOWS.
Att'ys for Laban Miles.

25 (EXHIBIT "A.")

In the District Court in and for Osage County, Oklahoma.

No. 1896.

LABAN MILES, Plaintiff,

vs.

JOHN KENNY, Defendant.

Journal Entry.

On the 25th day of April, 1913, same being a regular judicial day of the March 1913 term of said Court, the above entitled cause came on for hearing in its regular order, pursuant to agreement of the parties, before R. B. Boone, Special Judge agreed upon by the parties. The plaintiff appearing in his own proper person and by White & Widdows, his attorneys, and the defendant appearing in his own proper person and by Hargis & Conwell, his attorneys, and all parties waiving trial by jury and announced ready for trial by the Court. And thereupon the plaintiff began introduction of his testimony and said cause was on trial in said court before said Special Judge, all parties being present in their own proper persons and by their attorneys. as hereinabove set forth on the 25th, 26th day- of April, 1913, and on the 26th day of April the trial was adjourned to the 29th day of April, 1913, at noon, at which time said trial was resumed before said

Special Judge, all parties being pre ent in their own proper persons and by their attorneys, and continued on trial from noon of April 29th to May 2nd inclusive, during which said time the plaintiff introduced his testimony and rested and the defendant introduced his testimony and rested and thereupon the plaintiff offered his testimony in rebuttal and rested. And the Court after examination of the pleadings and hearing the arguments of Counsel in behalf of the respective parties, took the case under advisement pursuant to consent and agreement of counsel of the respective parties and stipulation of counsel for both parties filed in said cause; and

26 Now on this 24th day of May, 1913, after due consideration of all the evidence and arguments of counsel and being fully advised in the premises, the court finds the following facts:

That in September, 1907, the Plaintiff, Laban Miles, after having been divorced from his former wife, Wah-shah-she-me-tsa-he, according to Osage Indian custom, entered into an agreement with Lah-ta-sha whereby he and Lah-tah-sah agreed to become man and wife. That both were full-blood members of the Osage Indian Tribe and unmarried at the time. That they thereupon accumed the marriage relation and continued to sustain that relation up to the time of Lah-tah-sah's death on August 19th, 1908, a period of eleven months. That the morning after they assumed such relationship, the defendant, John Kenny, the son af Lah-tah-sah, by a former husband, received a horse given away by Hlu-ah-wah-tah, the brother-in-law of plaintiff, Laban Miles, in honor of the marriage of Laban Miles and Lah-tah-sah, in accordance with Osage Indian cu*m*tom, which horse defendant sold, appropriating the money to hi*w* own use. That on said morning other presents were given in accordance with the custom of Osage Indians at the marriage of Indians of the age of Laban Miles and Lah-tah-sah, and who had been theretofore married. That a feast was given in honor of said marriage on the morning after Laban Miles brought Lah-tah-sah to his home, but neither Laban Miles nor Lah-tah-sah, were at said feast. They Laban Miles and Lah-tah-sah went to the Osage Indian Agent and had themselves enrolled as man and wife, and a trading card was issued to Laban Miles on his own and Lah-tah-sah's quarterly annuities and payments. That Laban Miles and Lah-tah-sah were recognized by the Indians with whom they associated as man and wife until Lah-tah-sah's death. They were also so recognized during this time by the Osage Indian Agency and the Interior Department. That

27 after assuming said relationship in September 1907, they signed various papers to borrow money as man and wife, and held themselves out as such and were so recognized by those who dealt with them in a business way.

Conclusions of Law.

That plaintiff, Laban Miles, and Lah-tah-sah, Osage Allottee No. 256, were husband and wife at the time of the death of said Lah-tah-sah; that plaintiff, Laban Miles, is the surviving husband of said

Lah-tah-sah, and as such is the owner of an undivided one-half interest in and to the lands described in plaintiff's petition.

The court further finds that Lah-tah-sah, Osage Allottee No. 256, died intestate on or about the 19th day of August, 1908, leaving an estate consisting in part of the lands described in plaintiff's petition.

The Court further finds that the plaintiff, Laban Miles, and defendant, John Kenny, above named are the only heirs at law of said Lah-tah-sah, deceased, and as such plaintiff Laban Miles owns an undivided one-half interest, and the defendant John Kenny owns an undivided one-half interest in and to the lands allotted and deeded to said Lah-tah-sah, described in plaintiff's petition, to wit:

N. W. ¼ of Section 36, Township 24, Range 4, N. E. ¼ of Section 30, Township 28, Range 9, S. E. ¼ of Section 30, Township 28, Range 9; Lot 3, E. ½ of S. W. ¼ of N. W. ¼, S. E. ¼ of N. W. ¼, N. ½ of S. E. ¼ of Section 4, Township 20, Range 10, all north and east of the Indian Base and Meridian in Osage County, Oklahoma.

The court further finds that no part of the lands described was ever used, occupied or claimed by said Lah-tah-sah, deceased, or any of the parties to this action as a homestead, and that no part of same was the homestead of said Lah-tah-sah, or any of the parties to this action. The court further finds that the parties hereto have been unable to agree upon a partition or division of said lands.

28 It is therefore ordered, adjudged and decreed by the Court that the plaintiff, Laban Miles, and the defendant, John Kenny, are the owners in common of the lands described, and their respective interests and ownership herein is as follows:

Laban Miles, Plaintiff, Osage Allottee No. 507, an undivided one-half; John Kenny, Defendant, Osage Allottee No. 2857, an undivided one-half; and that the shares of the aforesaid parties and their respective interests in the lands above described as above set forth, be and the same are hereby confirmed. It is further ordered, adjudged and decreed by the Court that partition of said lands be made accordingly; that W. T. Mosier, J. W. Soderstrom and W. E. Savage are hereby appointed commissioners to make partition of said property among the parties according to their respective interests as herein fixed and determined, if such partition can be made without manifest injury. But if such partition cannot be made, the commissioners herein named shall make a valuation and appraisement of the property herein described and make a report of their proceedings to the Court.

R. B. BOONE,
Special Judge.

Endorsed: Filed this the 28th day of Feb. 1914, Belva L. Moore, Clerk of the County Court.

Service of within paper and receipt of a true copy thereof is hereby acknowledged this 28th day of Feb. 1914.

W. P. HAYGOOD,
Ass't Supt. Osage Indian School.

3—1093

29 In the County Court of Osage County, Oklahoma.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee 256, Deceased.

Demurrer of John Kenny.

Comes now John Kenny and demurs to the plea of res adjudicata and hearing on final account, filed by Laban Miles, for the reasons following:

1. The District Court of Osage County, Oklahoma, rendering the findings and judgment therein pleaded was without jurisdiction to render a final binding judgment therein.
2. The former administration pleaded was invalid for the Court had no jurisdiction of the persons or subject matter, and said Laban Miles is estopped from pleading same.
3. Said plea does not state facts entitling said Laban Miles to any right or relief—all as appear from said plea.

EMBRY & HASTINGS,
Att'ys for John Kinny.

Endorsed: Filed Feb. 28, 1914, Belva L. Moore, Clerk County Court.

Service acknowledged this 28th day of Feb. 1914.

JAMES A. CARROLL,
Supt. Osage Agency.
By F. A. BAKER.

30 STATE OF OKLAHOMA,
Osage County, ss:

In the County Court.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee, No. 256, Deceased.

Journal Entry.

Now on this 28th day of February, 1914, the above entitled matter came on for hearing and settlement of final account of administrator and determination of heirs, pursuant to order of Court made and entered on the 28th day of January, 1914, pursuant to due and legal notice. Claimant, John Kenny, appearing by John Embry, his attorney, filed his objections to the final account of the administrator and claiming to be the sole heir of Lah-tah-sah, deceased, and that the whole of said estate be distributed to him, and asked that said report be amended accordingly. Thereupon the claimant, Laban Miles, appeared by White and Widdows, his attorneys, and filed a plea of res adjudicata as to the determination of heirs, with copy of judgment rendered in the District Court of Osage County,

Oklahoma, in cause No. 1896, wherein Laban Miles was plaintiff and said John Kenny defendant. Thereupon said John Kenny by his attorney, John Embry, filed a demurrer to said plea of res adjudicata. And the Court having heard the argument of counsel and being fully advised in the premises finds that said demurrer should be overruled.

It is therefore ordered, adjudged and decreed that said demurrer be and the same hereby is by the Court overruled. To which ruling of the Court the said John Kenny objects and excepts, which objections and exceptions are by the Court allowed, and said John Kenny is given till and on March 12, 1914, to answer said plea.

It is further ordered by the Court that the above entitled matter be and the same hereby is continued to the 14th day of March, 1914, at 9 A. M. for further hearing on settlement of said final
31 account.

[SEAL.] CHAS. R. GRAY,
Special Judge.

O. K.
WHITE & WIDDOWS,
Att'ys for Laban Miles.

O. K.
EMBRY & HASTINGS,
Att'ys for John K.

Endorsed: Filed Mar. 14, 1914, Belva L. Moore, Clerk County Court.

Added by stipulation "Recorded in P. J. 3, pages 333 & 334."

32 In the County Court in and for Osage County, State of Oklahoma.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee, No. 256, Deceased, on Hearing of Final Account of Administrator.

Answer of John Kenny.

Comes now John Kenney and answering the plea of res adjudicata filed herein by Laban Miles, denies each and every allegation therein contained, except such as herein expressly admitted.

(2) For further answer, this John Kenny denies that said Laban Miles was ever married to decedent, or became or is the husband or heir of decedent.

(3) And further answering, John Kenney, alleges:

(*a*) That said previous administration was a nullity and of no effect, as the Court was without jurisdiction, and the said Laban Miles, having petitioned for this administration, is estopped to plead any previous administration.

(*b*) That the District Court rendering the judgment set up in said plea and referred to as the action between Laban Miles, plain-

tiff, and John Kenney, defendant, was without jurisdiction to hear or determine the same or to render any judgment therein, that the lands therein described were the restricted lands and allotments of the decedent, and that the decedent was a full blood Osage allottee who had not received a certificate of competency.

(*c*) That said decedent, said Laban Miles and said John Kenny are and were members of the Osage Tribe of Indians, of the full blood, residing in Osage County, Oklahoma, neither of whom
33 have received a certificate of competency, and all of whom were and are incompetent Indians; and the Secretary of the Interior refused and failed to confirm or approve said judgment and proceedings of said District Court, and the same is void and of no effect.

EMBRY & HASTINGS,
Attorneys for John Kenney.

Endorsed: Service accepted this 12th day of March, 1914.

JAMES A. CARROLL,
Superintendent,
Per F. A. B.

Endorsed: Filed Mar. 12, 1914. Belva L. Moore, Clerk County Court.

34 In the County Court of Osage County, State of Oklahoma.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee, No. 256, Deceased, on Hearing of Final Account of Administrator.

Motion.

Comes now Laban Miles, by White & Widdows, his attorneys, and moves the Court to strike all that part and the parts of the answer of John Kenney to the Plea of Res Adjudicata of Laban Miles, designated as (2), (3), and (*a*), (*b*), and (*c*), for the following reasons:

First. That each and all of said matters so designated in said answer are Res Adjudicata and have been passed on by this Court in the ruling on the Demurrer of said John Kenny to said Plea of Res Adjudicata.

Second. For the reasons that said matters and things designated as herein above stated are surplusage and incumbrance of the record and said John Kenny is precluded by the Plea of Res Adjudicata from introducing any evidence in support of any allegation therein contained.

WHITE & WIDDOWS,
Attorneys for Laban Miles.

Endorsed: Filed Mar. 14, 1914. Belva L. Moore, Clerk County Court.

Service of within paper and receipt of a true copy thereof is hereby acknowledged this 14 day of March, 1914.

JAMES A. CARROLL,
Sup't Osage Indian School,
Per N. R.

35 STATE OF OKLAHOMA,
County of Osage:

In the County Court.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee No. 265, Deceased.

Journal Entry.

Now on this 14th day of March, 1914, the above entitled matter coming on for hearing upon motion of Claimant, Laban Miles, to strike that part of the answer of John Kenny, to the plea of res adjudicata, designated as (2), (3), and (*a*), (*b*) and (*c*), and the Court having heard the argument of counsel and being fully advised in the premises finds that said motion should be sustained as to that part of said answer designated as "(2)" and overruled as the parts designated as "(3)", and "(*a*)", "(*b*)", and "(*c*)",

It is therefore ordered, adjudged and decreed by the Court that said motion be and the same hereby is sustained as to that part of said answer designated as "(2)", and overruled as to that part of said answer designated as "(3)", and "(*a*)", "(*b*)" and "(*c*)", and to part sustained the said John Kenney excepts, and to the parts overruled the said Laban Miles excepts.

[SEAL.] CHAS. R. GRAY,
Special Judge.

Endorsed: Filed Mar. 16, 1914. Belva L. Moore, Clerk County Court. Recorded in P. J. 3, Pages 334 and 335.

36 STATE OF OKLAHOMA,
County of Osage, ss:

In the County Court.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee, No. 256, Deceased.

Journal Entry.

Now on this 14th day of March, 1914, the above entitled matter coming on for hearing before Chas. R. Gray, Special Judge, pursu-

ant to continuance as per Journal Entry in said matter made and rendered on the 28th day of February, 1914; claimant, Laban Miles, appearing by White & Widdows, his attorneys; and claimant, John Kenney, appearing by John Embry and A. S. Sands, his attorneys, and further appearing in his own proper person; and the Court having heard the evidence and the arguments of counsel, and being fully advised in the premises finds:

That the final account rendered by John L. Bird, administrator of the estate of said Lah-tah-sah, deceased, is true and correct, that said administrator has made no profit out of said estate and has made disbursements as stated in said accounts, and statement of disbursements since rendition of said final account, and that said disbursements should be approved.

The Court further finds that the Administrator is entitled to the sum of $12.00 as commission on amount of money belonging to said estate received and accounted for by said administrator.

The Court further finds from the evidence that the sole and only heirs of said Lah-tah-sah, deceased, are Laban Miles, surviving husband, and John Kenny, the only issue of said Lah-tah-sah, deceased, and that upon her death the entire estate of said Lah-tah-sah, deceased, descended in equal shares to said Laban Miles and said John Kenny, to wit: An undivided ½ to each.

37 It is therefore Ordered, adjudged and decreed by the Court that the final account of John L. Bird, administrator, of said estate, be, and the same hereby is, by the Court approved, and that said John L. Bird, deduct from the money in his hands, belonging to said estate, the sum of $12.00 as compensation for services rendered as administrator in said estate, and file a receipt therefor, in this Court; that said administrator pay the Court costs now due and unpaid, out of the money in his hands, belonging to said estate, and file receipt therefor in this Court.

It is further ordered, adjudged and decreed by the Court, that the sole and only heirs of Lah-tah-sah, deceased, are Laban Miles, surviving husband, and said John Kenny, the only issue of said Lah-tah-sah, deceased; that upon the death of said Lah-tah-sah, deceased, her entire estate descended in equal shares to said Laban Miles and said John Kenney, towit: an undivided ½ thereof to each, and that upon the payment of costs and administration fees, as herein above provided, said administrator pay the remainder of the money now in his hands belonging to said estate, one-half to said Laban Miles, and one-half to said John Kenny, and take their receipt therefor and file same in this Court and thereupon be discharged. To all of which findings and judgment of the court said John Kenney excepts and upon his request the court fixes appeal bond at Three Hundred Dollars.

[SEAL.]

CHAS. R. GRAY,
Special Judge.

O. K. WHITE & WIDDOWS,
Att'ys for Laban Miles.

O. K. JOHN EMBRY,
Att'y for John Kenney.

Endorsed: Filed this the 16 day of March 1914. Belva L. Moore, Clerk of the County Court. Recorded in P. J. 3, Pages 335 and 336.

38 In the County Court of Osage County, Oklahoma.

In the Matter of the Estate of LAH-TAH-SAH, Roll No. 256, Deceased.

Motion for New Trial.

Comes now the said John Kenney, as heir at law of said deceased, and moves the court to vacate and set aside the final orders, decree and judgment herein rendered on the 14th day of March, 1914, and grant a new trial, for the following causes, which effect materially the substantial rights of the said John Kenney, as heir of said deceased.

1. Irregularity in the proceedings of the Court, by which said party was prevented from having a fair hearing and trial.
2. Irregularities in the proceedings of the prevailing party, Laban Miles, by which the said party, John Kenney, was prevented from having a fair trial.
3. Irregularity in the orders of the Court by which said party, John Kenney, was prevented from having a fair trial.
4. Misconduct of the prevailing party, Laban Miles.
5. Accident and surprise, which ordinary prudence could not have guarded against.
6. Excessive awards and allowances and interests in said estate assigned the prevailing party, Laban Miles, appearing to have been given under the influence of passion or prejudice.
7. Error in the assignment of the amount of recovery by Laban Miles.
8. That the decision and decree of the Court is not sustained by sufficient evidence.
9. That the decision, decree, and final orders of the Court are contrary to law.

39 10. Error of law occurring at the trial, and excepted to by the party making this application, John Kenney.

11. Error of the Court in overruling the demurrer of John Kenney, to the plea of res adjudicata of Laban Miles.
12. Error of the Court in sustaining the motion of Laban Miles, to strike from the pleading of John Kenney, parts thereof, including paragraph 2.
13. Error of the Court in sustaining the plea of res adjudicata set up and plead herein by Laban Miles.
14. Error — the Court in refusing to admit the testimony of John Kenney, and other witnesses offered to show that Laban Miles was not married to the deceased; was not a husband of the deceased, and is not entitled to share in said estate or its assets.
15. The court erred in refusing to hear testimony and admit evidence for the purpose of determining the legal heirs of said deceased.
16. The court erred in holding that the heirs at law of said

deceased had been legally determined by a court of competent jurisdiction.

17. The court erred in sustaining the oral motion of Laban Miles, to order and decree an approval of the accounts of the Administrator herein, and a distribution of the assets of said estate.

18. The court erred in admitting evidence in support of the plea of Laban Miles, setting forth a prior adjudication and determination by the District Court of said County of the heirs of said deceased, and holding that Laban Miles is entitled to participate in the assets of the estate.

EMBRY & HASTINGS AND
A. S. SANDS,
Attorneys for John Kenney.

Endorsed: Filed Mar. 17, 1914. Belva L. Moore, Clerk County Court.

40 In the County Court of Osage County, Oklahoma.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee, No. 256, Deceased.

Journal Entry.

This cause coming on to be heard this 19th day of March, 1914, one of the judicial days of the January 1914 term of said Court, upon the Motion for New Trial of John Kenney, as heir of said deceased, and all parties interested being represented by their respective attorneys, after presentation of said Motion and examination of the same by the Court, and the Court being fully advised in the premises, the said Motion is by the Court overruled and denied, to which ruling the said John Kenny in open court duly excepts, and said exception is by the Court allowed.

CHAS. R. GRAY,
Special Judge of County Court in Probate.

O. K.
WHITE & WIDDOWS,
Attorneys for Laban Miles.

O. K.
EMBRY & HASTINGS AND
A. S. SANDS,
Attorneys for John Kenny.

Endorsed: Filed Mar. 21, 1914, Belva L. Moore, Clerk County Court. Recorded in P. J. 3—pages 340 and 341.

41 In the County Court of Osage County, Oklahoma.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee, Roll No. 256, Deceased.

Appeal Bond.

Whereas, on March 14th, 1914, in the Matter of the Estate of Lah-tah-sah, Osage Allottee No. 256, deceased, pending in the County Court of Osage County, Oklahoma, upon the final report of the administrator, and for the settlement of such final account, and for distribution of said estate, and upon the pleadings and issues therein between Laban Miles and John Kenney, contesting claimants, the said Laban Miles by the judgment and consideration of said court was adjudged to be one of the heirs of said Lah-tah-sah, deceased, and entitled to one-half interest in said estate, and to receive one-half of the money in the hands of the administrator, after payment of costs and fees of administration, and the Administrator's account being also settled in said decree; and,

Whereas, said John Kenney, has appealed therefrom to the District Court of said Osage County, upon both questions of law and fact, and the Judge of said County Court having fixed the amount of said appeal bond at $300.00.

Now, therefore, we, John Kenney, as principal, and F. W. Farrar, residing at Pawhuska, Oklahoma, and Necia Kenney, residing at Fairfax, Oklahoma, hereby undertake and bind ourselves to the State of Oklahoma, in the full sum of $300.00 that the appellant John Kenney, will prosecute his appeal with due diligence to a determination, and will abide, fulfill and perform whatever judgment, decree or order may be rendered, against him in that proceeding by the District Court, and that he will pay all damages which
42 the opposite party may sustain by reason of such appeal, together with all costs that may be adjudged against him.

Witness our hands this 14th day of March 1914.

JOHN KENNEY.
F. W. FARRAR.
NECIA KENNEY.

The above undertaking filed and the same and sureties thereon approved this 20" day of March, 1914.

CHAS. R. GRAY,
Special Judge County Court,
Osage County, Oklahoma.

STATE OF OKLAHOMA,
County of Osage, ss:

F. W. Farrar and Necia Kenney, being duly sworn, each for himself says that he is one of the sureties on the foregoing bond, and that

he is worth in property, subject to execution the sum of $600.00 over and above his debts, liabilities and exemptions.

F. W. FARRAR.
NECIA KENNEY.

Subscribed and sworn to before me this 15" day of March, 1914.
[SEAL.] WILLIAM A. DANIELS,
Notary Public.

My commission expires Oct. 19, 1916.

Endorsed: Filed March 21, 1914. Belva L. Moore, Clerk County Court.

43 STATE OF OKLAHOMA,
County of Osage, ss:

In the County Court of Osage County, Oklahoma.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee, No. 256, Deceased.

To John Bird, Administrator; Laban Miles, Claimant, and White & Widdows, his attorneys of record, and the Judge of said Court, and Hon. Chas. R. Gray, Special Judge in said cause and court, and all persons interested in the above entitled estate:

Notice is hereby given that John Kenny, heir at law of Lah-tah-sah, Osage Allottee No. 256, Deceased, and claimant to the estate of said decedent, appeals to the District Court of Osage County, Oklahoma, on both question of law and fact, from the County Court of Osage County, Oklahoma, and the judgment rendered in said Court, in the above entitled matter, by the Hon. Chas. R. Gray, Special Judge, on, to wit: March 14, 1914, finding that the said Laban Miles is the surviving husband and heir of the said Lah-tah-sah, deceased, and distributing to the said Laban Miles, one-half of the estate of the said Lah-tah-sah, deceased, which said judgment and order, omitting the formal parts, is in substance as follows, to wit:

"Now on this 14th day of March, 1914, the above entitled matter coming on for hearing before Chas. R. Gray, Special Judge, pursuant to continuance as per Journal Entry in said matter made and rendered on the 28th day of February, 1914, Claimant Laban Miles, appearing by White & Widdows, his attorneys, and Claimant, John Kenney, appearing by John Embry and A. S. Sands, his
44 attorneys, and further appearing in his own proper person; and the Court having heard the evidence and the argument of counsel, and being fully advised in the premises, finds:

That the final account rendered by John L. Bird, administrator of the estate of said Lah-tah-sah, deceased, is true and correct, and that said administrator has made no profit out of said estate and has made disbursements as stated in said account, and statement of disbursements since rendition of said final account, and that said disbursements should be approved.

The court further finds that the administrator is entitled to the sum of $12.00 as commission on amount of money belonging to said estate received and accounted for by said administrator.

The Court further finds from the evidence that the sole and only heirs of said Lah-tah-sah, deceased, are Laban Miles, surviving husband, and John Kenney, the only issue of said Lah-tah-sah, deceased, and that upon her death the entire estate of said Lah-tah-sah, deceased, descended in equal shares to said Laban Miles and said John Kenney, to-wit: an undivided one-half to each.

It is therefore ordered, adjudged and decreed by the Court that the final account of John L. Bird, administrator, of said estate be, and the same is hereby, by the Court approved, and that said John L. Bird deduct from the money in his hands, belonging to said estate, the sum of $12.00 as compensation for services rendered as administrator in said estate, and file a receipt therefor in this Court; that said administrator pay the court costs now due and unpaid, out of the money in his hands, belonging to said estate and file a receipt therefor in this Court.

It is further ordered, adjudged and decreed by the court that the sole and only heirs of Lah-tah-sah, deceased, are Laban Miles,
45 surviving husband, and said John Kenney, the only issue of said Lah-tah-sah, deceased; that upon the death of the said Lah-tah-sah, deceased, her entire estate descended in equal shares to said Laban Miles and said John Kenney, to-wit: an undivided one-half thereof to each, and that upon the payment of costs and administration fees, as hereinabove provided, said administrator pay the remainder of the money now in his hands belonging to said estate, one-half to said Laban Miles, and one-half to said John Kenney, and take their receipt therefor and file same in this Court and thereupon be discharged.

To all of which findings and judgment of the Court, said John Kenney excepts, and upon his request the Court fixes the appeal bond at Three Hundred ($300.00) Dollars.

Second.

And appeals to said District Court from the subsequent order of said County Court, overruling motion for new trial in said cause.

Third.

And appeals to said District Court from the previous order of said County Court, on, to-wit: February 28, 1914, overruling demurrer of said John Kenney to the plea of res adjudicata filed in said matter and cause by said Laban Miles, and upon said question of law the said John Kenney will rely principally upon the grounds that the findings, judgment and decree of the District Court of Osage County, Oklahoma, in the case of Laban Miles vs. John Kenney, defendant, a copy of which is attached to said plea of res adjudicata, is not res adjudicata of the issues therein involved and does not estop the said John Kenney from disputing the findings, and judgments

therein contained, and that the said Lah-tah-sah, John Kenney, and Laban Miles, were, and are full blood, incompetent Osage
46 Indians, members of the Osage Tribe of Indians, residing in Oklahoma, to whom no certificates of competency have ever been issued, and that said judgment and decree was an attempt to partition the restricted allotments and lands of the said Lah-tah-sah, deceased, and the said findings, judgment and proceedings have never been approved by the Honorable Secretary of the Interior.

Fourth.

And appeals to said District Court from the previous order of the said Hon. Chas. R. Gray, Special Judge, rendered on, to-wit: March 14, 1914, striking out of the second paragraph of the answer of the said John Kenney, and that the said John Kenney on said question, intends to rely principally upon the grounds that the said Laban Miles was not married to said deceased, and did not become, and is not the husband or heir of said decedent, and that the said John Kenney is entitled to introduce proof to show that the said Laban Miles was never married to the decedent, and was not the husband of the decedent, and is not an heir of the decedent.

That the said judgments and orders made and rendered in said County Court by the said Special Judge thereof, directed the distribution of the estate, and part of the estate of the said Lah-tah-sah, deceased, and were judgments, decrees and orders of said court affecting the substantial rights of this said appellant, John Kenney.

And said John Kenney will ask a trial de novo in said District Court, to the end that he may be decreed the sole heir of said decedent, and that the whole of said estate be distributed to him.

JOHN KENNEY,

By JOHN EMBRY,
Attorney for John Kenney.

A. S. SANDS,
EMBRY & HASTINGS,
Attorneys for John Kenney.

Service of the foregoing and a copy thereof acknowledged and received this 20th day of March, 1914.

WHITE & WIDDOWS,
Att'ys for Laban Miles.

CHAS. R. GRAY.
JOHN L. BIRD.

Endorsed: Filed Mar. 21, 1914, Belva L. Moore, Clerk County Court.

47 STATE OF OKLAHOMA,
County of Osage, ss:

In the County Court.

Certificate of Appeal.

I, Chas. R. Gray, Judge of said County Court, in the above entitled cause do hereby certify that the within and foregoing is a full, true and correct transcript and copy of the Appeal Bond, Notice of Appeal, Judgment and Decree appealed from, and of the minutes, records and papers and proceedings in said cause, as the same appears of record in this office.

Cost of transcript $6.50, due County Court.

[SEAL.] CHAS. R. GRAY,
Special Judge of said Court.

Attest:
[SEAL.] BELVA L. MOORE,
Clerk of said Court.

Endorsed: District Court, State of Oklahoma, County of Osage. Filed Apr. 1, 1914, Thos. Leahy, Jr., Clerk District Court, by A. B. Cotter, Deputy.

48 Be it known that on, towit, March 1st, 1915, the said Laban Miles filed in said cause and court, his motion to dismiss said appeal, which motion, together with all the indorsements thereon, was and is in the words and figures following, towit:

49 STATE OF OKLAHOMA,
County of Osage, ss:

In the District Court of Osage County, Oklahoma.

No. 2372.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee #256, Deceased, on Appeal from the County Court to the District Court.

Motion to Dismiss Appeal.

Comes now Laban Miles, Osage Allottee No. 507, a party in interest and moves the court to dismiss the above entitled matter and the appeal thereof for the following reasons:

1st. That the court has no jurisdiction of the subject matter involved.

2nd. That the District Court has no appellate jurisdiction in probate matters wherein the decedent at the time of death was an enrolled Osage Indian to whom no certificate of competency had been issued.

3rd. That the court has no jurisdiction to change, modify, affirm or reverse the decision and judgment of the County Court rendered in the above matter, determining and ascertaining the legal heirs of said Lah-tah-sah, deceased, for the reason that by an act of Congress approved April 18th, 1912, (Public No. 125), provided that the property of deceased Osage Allottees shall, in probate matters be subject to the jurisdiction of the County Court.

H. P. WHITE,
Attorney for Laban Miles.

Endorsed: Filed this the 1st day of March, 1915, Thos. Leahy, clerk of the Dist. Court, by Eula B. Foley, Deputy Clerk.

50 Be it known that thereafter, towit, on March 1st, 1915, Hon. R. H. Hudson, District Judge of the Twenty-fourth Judicial District in and for said Osage County, being disqualified to serve as such Judge in said cause by reason of having been counsel for one of the parties, it was agreed by counsel for the said appellant, John Kenny, and Appellee, Labin Miles, that, in lieu of, an election of a special Judge, the Hon. A. R. Museller, a duly qualified and acting member of the bar, be and he was agreed upon as special Judge to try the issues of the above entitled cause and to continue to act as special Judge in said cause from term to term until the appeals, if any, should be taken in said case, were perfected, which agreement was duly filed in said cause on the 15th day of March, 1915, in the office of the Clerk of said Court, and is, together with all endorsements thereon, in the words and figures following, towit:

This page as per stipulation, corrected to read as follows: (see next page.)

51 Be it known that thereafter, towit, on March 1st, 1915, Hon. R. H. Hudson, District Judge of the Twenty-fourth Judicial district in and for Osage County, Okla., being disqualified to serve as such judge in said cause by reason of having been counsel for one of the parties, it was agreed by and between counsel of record for said appellant, John Kenny, and counsel of record for appellee, Laban Miles, that, in lieu of an election of a special Judge, the Hon. A. R. Museller, a duly qualified and acting member of the bar of said 24th Judicial District, and a resident of Osage County, Oklahoma, who was not disqualified, be, and he was agreed upon as special judge to hear, decide, and try the issues and render judgment in said cause in the same manner and to the same effect as said disqualified district judge could have rendered but for his disqualification, and to continue to act as such special judge in said cause from term to term until the appeals, if any should be taken in said cause, were perfected, which agreement was duly filed in said cause on the 15th day of March, 1915, in the office of the clerk of said court, and is, together with all endorsements thereon, in the words and figures following, towit:

52 STATE OF OKLAHOMA,
County of Osage:

In the District Court of Osage County, Oklahoma.

No. 2372.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee #256, Deceased, on Appeal from the County Court to the District Court.

Now on this 1st day of March, 1915, the same being a regular judicial day of the March, 1915, term of said court, the Hon. R. H. Hudson, District Judge of the Twenty-fourth Judicial District, being disqualified to serve as such in the above entitled cause by reason of having been of counsel for one of the parties and in lieu of an election to elect a special judge, the parties to the above mentioned matter by their respective attorneys agree that A. R. Museller be and he hereby is agreed upon as special judge to try the issues in the above entitled matter with like jurisdiction as the regular judge in such cases. And it is agreed his power as such special judge continue from term to term until the appeals in this case are perfected if any be taken.

JOHN EMBRY,
Attorney for John Kenney.
H. P. WHITE,
Attorney for Laban Miles.

Endorsed: Filed this the 1st day of March, 1915, Thos. Leahy, Clerk of the Dist. Court, by Eula B. Foley, Deputy Clerk.

53 Be it known that thereafter, towit, on March 8th, 1915, the Hon. A. R. Museller accepted such office as special judge in said cause, and took, subscribed and filed in said court his oath of office, which, together with all the indorsements thereon, was and is in the words and figures following, towit:

54 STATE OF OKLAHOMA,
County of Osage, ss:

In the District Court of Osage County, Oklahoma.

No. 2372.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee #256, Deceased, on Appeal from the County Court to the District Court.

Oath of Special Judge.

I, A. R. Museller, do solemnly swear that I will support, obey, and defend the Constitution of the United States, and the Constitu-

tion of the State of Oklahoma, and will discharge the duties of my office as Special Judge in the above entitled matter with fidelity; that I have not paid, or contributed, either directly or indirectly, any money or other valuable thing, to procure my nomination, election or appointment; that I have not, knowingly, violated any election law of the State, or procured it to be done by others in my behalf; that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law, and I further swear that I will not receive, use or travel upon any free pass or on free transportation during my term of office.

A. R. MUSELLER.

Subscribed and sworn to before me this 8th day of March, 1915.
[SEAL.] THOS. LEAHY,
Court Clerk.
By EULA B. FOLEY, *Deputy.*

Endorsed: Filed Mar. 8, 1915. Thos. Leahy, Court Clerk.

55 Be it known that thereafter, to wit, on said March 8, 1915 the said motion to dismiss said appeal was argued by counsel and duly considered by the court, and was by the court overruled, to which ruling the said Laban Miles duly excepted and exceptions were allowed, which said ruling, exceptions and journal entry thereof, with all indorsements thereon was and is in the words and figures following, to wit:

56 STATE OF OKLAHOMA,
County of Osage, ss:

In the District Court of Osage County, Oklahoma.

No. 2372.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee #256, Deceased, on Appeal from the County Court to the District Court.

Journal Entry Overruling Motion to Dismiss the Appeal.

Now on this 8th day of March, 1915, the same being a regular judicial day of the March, 1915, term of said court the above entitled cause comes on for hearing before A. R. Museller, Special Judge, upon a motion of Laban Miles, appellee, to dismiss the appeal, appellant, John Kenney, appearing by John Embry, his attorney, and appelle-, Laban Miles, appearing in his own proper person and by H. P. White, his attorney, and the court having heard the argument of counsel and being fully advised in the premises finds that the said motion to dismiss the appeal should be overruled to which finding of the court said Laban Miles objects and excepts, which objections

and exceptions are by the court allowed. It is therefore ordered, adjudged and decreed by the court that the motion of said Laban Miles, appelle-, to dismiss the appeal be and the same hereby is by the court overruled to which ruling of the court said Laban Miles objects and excepts, which objections and exceptions are by the court allowed.

By agreement of the parties and their respective counsel it is further ordered by the court that further hearing in the above entitled matter be adjourned to April 2nd, 1915.

A. R. MUSELLER,
Special Judge.

57 O. K.
H. P. WHITE,
Attorney for Laban Miles.
JOHN EMBRY,
Attorney for John Kenney.

Endorsed on back as follows: Filed March 8, 1915. Thos. Leahy, County Clerk, by Eula B. Foley, Deputy. Rec. Journ. 7, page 408.

58 Be it known that thereafter, to wit, on April 2nd, 1915, the above entitled cause on appeal, came on for hearing in the district court of Osage County, Oklahoma, before the Hon. A. R. Museller, special judge, and upon consideration of the demurrer of the said John Kenny to the plea of res adjudicata of the said Laban Miles, and after argument of the counsel and upon consideration of the court, the court overruled said demurrer, to which ruling the said John Kenney duly excepted.

And further, upon consideration by the court of the motion of the said Laban Miles, to strike certain designated paragraphs from the answer of the said John Kenny, the same was duly argued by counsel and considered by the court and the following proceedings and exceptions, as more fully set out in the journal entry herein, were had and taken, to wit:

59 In the District Court of Osage County, Oklahoma, Honorable A. R. Museller, Special Judge, Presiding.

Case No. 2372.

In the Matter of the Estate of LAH-TAH-SAH, Deceased, Osage Allottee No. 256, Deceased.

On Appeal from the County Court of Osage County.

Now on this April 2, 1915, the same being a judicial day of the regular March, 1915, term of said court, Special Judge Honorable A. R. Museller, presiding, the above entitled matter came on for hearing upon the demurrer of the Appellant, John Kenney, to the plea of Res adjudicata of the said Laban Miles, and after due argument by Counsel, and consideration thereof by the Court, the Court

overrules the demurrer, to which ruling, the said John Kenney excepts.

Thereafter, and on the same day, the said matter came on for hearing in said court, the said Special Judge, presiding, upon the motion of the said Laban Miles, as appears in the record, to strike from the answer of the said John Kenney, certain of the designated paragraphs of such answer, and after argument by counsel and consideration thereof by the court, the Court sustains the motion of Laban Miles to strike paragraph 2, and also sustains as to Paragraph 3-*a*, paragraph 3-*b*, and paragraph 3-*c*, and the said John Kenney excepts to such ruling; and the said John Kenney specially excepts to the ruling, striking out the second section referred to as the second section; and the said John Kenney specially excepts to the ruling of the Court in striking out paragraph No. 2, of said answer; and John Kenney specially excepts to the ruling of the Court, striking out Paragraph 3-*a* of said answer; and John Kenney specially excepts to the ruling of the Court in striking out paragraph 3-*b* of said answer; and John Kenney specially excepts to the ruling of the Court in striking out Paragraph 3-*c* of said answer.

60 Be it known that thereafter, on-to-wit, April 2nd, 1915, the said cause coming on for trial, in said District Court, before A. R. Museller, special judge, as aforesaid, the said Appellant, John Kenny, being present in person, and by his Attorney, John Embry, and the said Laban Miles being present in person and by his attorney, H. P. White, the jury is waived and the cause is tried to the court; whereupon, on the trial of said cause the following testimony was introduced and proceedings had, and exceptions taken, to wit:

61 Witnesses for Laban Miles, after being duly sworn testify as follows, to-wit:

Direct examination.

Thos. Leahy (by H. P. White):

Q. You may state your name?
A. Thomas Leahy.
Q. What official position do you occupy, if any?
A. Court Clerk of Osage County, Oklahoma.
Q. Prior to being elected as Court Clerk, what official position did you occupy, if any?
A. Clerk of the District Court of Osage County.
Q. And how long were you Clerk of the District Court?
A. About seven years.
Q. Since statehood?
A. Since statehood, yes sir.
Q. You may examine the instrument shown you, marked Laban Miles' Exhibit 1, and state whether or not that is a file belonging to your office?
A. Yes sir, it is.
Q. By Appellee: Laban Miles offers in evidence, the instrument marked Laban Miles' Exhibit 1, identified by the witness, same being

he petition in the case of Laban Miles, plaintiff, vs. John Kenney, efendant, Case No. 1896.

By Appellant: To which said John Kenney objects, for the reason hat it purports to be a pleading in a purported action of the District Court of Osage County, pertaining to the restricted lands of the said Lah-tah-sah, Deceased, and the said Lah-tah-sah was non-competent Osage Indian, and a member of the Osage Tribe of Indians of Oklahoma, who had not received a certificate of competency at or before her death, and the said proceeding in partition in
32 which said offered exhibit was a part, was never approved by the Secretary of the Interior, and the offering of the writ-ng is incompetent, irrelevant, and immaterial.

By the Court: Objection overruled.

By Appellant: Exception; John Kenney further objects to Exhibit 1, as incompetent to prove the truth of any of the statements herein contained.

By the Court: Objection overruled.

By Appellant: Exception.

Q. You may examine the instrument marked Laban Miles' Exhibit No. 2, and state whether or not that is a file belonging to your office?

A. It is.

Q. By Appellee: Laban Miles now offers in evidence the instrument marked Laban Miles' Exhibit 2.

By Appellant: Objected to by John Kenney, for the same reason as to the objection to Exhibit 1.

By the Court: Overruled.

By Appellant: Exception.

Q. You may examine the instrument marked Laban Miles' Exhibit 3, and state whether or not that is a file belonging to the records of your office?

A. It is.

Q. Laban Miles now offers in evidence, the instrument marked Laban Miles' Exhibit 3, same being a Reply to the Answer and cross petition of the Defendant, in the *same* of Laban Miles vs. John Kenney No. 1896.

By Appellant: To this offer, John Kenney objects for the same reason hereinbefore stated to Exhibit No. 1.

By the Court: Overruled.

By Appellant: Exception.

Q. You may examine the instrument marked Laban Miles' Exhibit 4 and state whether or not that is an instrument that belongs to and is a part of the files of your office?

63 A. It is.

Q. State whether or not it has been recorded in the journals of your office?

A. Yes sir, recorded in Journal 5, page 326.

By Appellee: Laban Miles now offers in evidence the instrument marked Laban Miles' Exhibit 4, identified by the witness, same being a journal entry and judgment in the case of Laban Miles plaintiff vs. John Kenney, defendant, No. 1896.

By Appellant: To which John Kenney objects for the reason that the District Court rendering the judgment was without jurisdiction to hear or determine the same, or to render any judgment therein, the lands therein described being the restricted lands allotted to the said Lah-tah-sah, deceased, and the said Lah-tah-sah, deceased, being an Osage Indian, a member of the Osage Tribe of Indians in Oklahoma, who had not received a certificate of competency; the said John Kenney further objects to the testimony offered for the reason that the said Laban Miles and the said John Kenney, and the said Lah-tah-sah, deceased, were all full blood Osage Indians, members of the Osage Tribe of Indians in Oklahoma, none of whom has at any time received a certificate of competency, and the lands described in the judgment offered, were the allotments made to said Lah-tah-sah as such incompetent full blood Indian, and were restricted lands, and lands that the said Lah-tah-sah at no time had the right or the power to alienate or encumber, and the said judgment offered was never approved by the Secretary of the Interior, and no partition or proceeding under such judgment was ever approved by the Secretary of the Interior; and John Kenney objects for the further reason that the Court trying such cause, had no jurisdiction to try and determine the adverse claims of heirs to such property, or to the estate of the said Lah-tah-sah, deceased; and the said John Kenney fur-

64 ther objects for the reason that at the time of the institution of said suit in which said judgment was rendered, and during the pendency of said suit, and at the time of the rendition of such judgment, this action and proceeding in administration of the Estate of the said Lah-tah-sah, deceased, was pending a proceeding in the County Court of Osage County, and the sole and only jurisdiction over such lands or to determine such heirships, was at that time vested in the County Court of Osage County, in such administration proceeding, and the testimony offered is incompetent, irrelevant, and immaterial; and further, the testimony offered is incompetent to prove any of the allegations or statements therein contained.

By the Court: Objection overruled.

By Appellant: John Kenney excepts.

Q. Now, the instrument you have just examined, marked Laban Miles' Exhibit 4, state whether or not that is the original journal entry signed by the Trial Judge in the case of Laban Miles vs. John Kenney, No. 1896?

A. It is.

Q. You may examine the book I now hand you and state what it is?

A. It is the judgment docket in the District Court, called the new No. 1 Judgment Docket.

Q. State whether or not that judgment in the case of Laban Miles vs. John Kenney, No. 1896, is entered on that Book of judgment?

A. It is.
Q. At what place?
A. 142.

By Appellee: Laban Miles now offers in evidence at page 142, of the Judgment Docket, new No. 1, of the District Court of Osage County, Oklahoma, referred to herein as Ex. 15.

By Appellant: To which the said John Kenney objects for the same reason as given to No. 4.

65 By the Court: Overruled.
By Appellant: Exception.

Q. As part of the records of your office, do you keep a book known as a journal?
A. Yes sir.
Q. And what do you record in such journal?
A. Orders and Journal entries.
Q. Journal entries of judgment?
A. Yes sir, and the minutes of the Clerk, also court proceedings.

By Appellee: Laban Miles now offers in evidence the page of the entry beginning on page 326, in Volume 5, of the Journal of the Office of the Court Clerk, same being the recorded journal entry of judgment in the case of Laban Miles, vs. John Kenney, No. 1896.

By Appellant: John Kenney objects to the offer for the same reason as objection made to Exhibit No. 4, it being understood that the offer is the record entered on the journal of the court of Exhibit No. 4.
By the Court: Overruled.
By Appellant: Exception.

Q. You may examine the instrument now shown you marked Laban Miles' Exhibit 5, and state whether or not that is a part of the files and records of your office?
A. It is.

Q. Laban Miles now offers in evidence instrument marked Laban Miles' Exhibit 5, same being the motion for a new trial on behalf of John Kenney in the case of Laban Miles vs. John Kenney, No. 1896.

By Appellant: Objected to by John Kenney, as incompetent irrelevant and immaterial.
By the Court: Overruled.
By Appellant: Exception.

66 Q. I ask you to examine the instrument now shown you marked Laban Miles' Exhibit 6, and state whether or not it is a part of the records and files of your office?
A. It is.

Q. By Appellee: Laban Miles now offers in evidence, Laban Miles' Exhibit 6, same being Journal entry overruling motion for new trial in the case of Laban Miles vs. John Kenney, No. 1896.

By Appellant: To which John Kenney objects for the reason it is incompetent, irrelevant and immaterial.
By the Court: Overruled.
By Appellant: Exception.

Q. You may examine the instrument marked Laban Miles' exhibit 6, again, and state whether or not that is the original signed journal entry, overruling motion for new trial?
A. It is.
Q. State whether or not that is recorded, and if so, where?
A. Yes sir, Journal 5, at page 455.
Q. You may examine the instrument now shown you, marked Laban Miles' Exhibit 7, and state whether or not that is a part of the files and records of your office?
A. Yes sir, it is.

By Appellee: Laban Miles now offers in evidence the instrument marked Laban Miles' Exhibit 7, identified by the witness, the same being stipulation and agreement for the appointment of R. B. Boone, Special Judge, in the case of Laban Miles vs. John Kenney, No. 1896.

67 By Appellant: To which John Kenney objects as incompetent, irrelevant, and immaterial.
By the Court: Overruled.
By Appellant: Exception.

Q. You may examine the instrument now shown you marked Laban Miles' Exhibit 8, and state whether or not it is a part of the records of the files of your office?
A. It is.

By Appellee: Laban Miles now offers said Exhibit 8, identified by the witness, in evidence.

By Appellant: To which John Kenney objects, for the reason, it is incompetent, irrelevant, and immaterial.
By the Court: Overruled.
By Appellant: Exception.

By Appellant: John Kenney admits that R. B. Boone subscribed and took the oath of office before he attempted to act as Special Judge in Case No. 1896.

68 Cross-examination.

(By John Embry:)

Q. Mr. Leahy, that book you have, and these books and records to which your testimony refers, are all books and records of the District Court of Osage County, Oklahoma?
A. Yes sir.
Q. And none of them are records or books of the County Court of Osage County?
A. No sir.

Q. Or of the probate record of Oklahoma Territory of Osage County?

A. No sir.

Q. Have you any records of proceedings, or entry on any records, papers, or proceedings, showing that the Secretary of the Interior approved this judgment, or approved any proceedings in the case?

A. No sir, I have not.

Q. Have you any records or proceedings, papers, or entry on any records, showing or tending to show that the Secretary of the Interior approved or took any action with respect to any partition or sale, or the judgment, or any other proceedings in this case?

A. I don't think I have, I don't remember of any.

Q. Well, your attention has been called to this a number of times, hasn't it?

A. No sir, I looked this morning, but I don't find any records of that kind, I looked at the Appearance Docket this morning.

69 Redirect examination.

(By H. P. White:)

Q. You may examine the instruments now shown you, marked Laban Miles' Exhibits 9, 10, 11, 12, 13 and 14, and state whether or not they and each of them are instruments that contained a part of the records and files of your office?

A. Yes sir.

By Appellee: Laban Miles now offers in evidence the instrument marked Laban Miles Exhibit 9.

By Appellant: To which John Kenney objects as incompetent, irrelevant, and immaterial, and not approved by the Secretary of the Interior.

By the Court: Overruled.

By Appellant: Exception.

By Appellee: We now offer in evidence, instrument marked Laban Miles' Exhibit 10, identified by the witness.

By Appellant: Objected to as incompetent, irrelevant, and immaterial, and not approved by the Secretary of the Interior.

By the Court: Overruled.

By Appellant: Exception.

By Appellee: We now offer in evidence, instrument marked Laban Miles' Exhibit 11, identified by the witness.

By Appellant: Same objection.

By the Court: Overruled.

By Appellant: Exception.

By Appellee: Laban Miles now offers in evidence instrument marked Laban Miles' Exhibit 12.

By Appellant: John Kenney objects as incompetent, irrelevant, and immaterial, and not approved by the Secretary of the Interior.

By the Court: Overruled.
70 By Appellant: Exception.

By Appellee: Laban Miles now offers in evidence, instrument marked Laban Miles' Exhibit 13, identified by the witness.

By Appellant: To which John Kenney objects as incompetent, irrelevant, and immaterial, and not approved by the Secretary of the Interior.

By the Court: Overruled.

By Appellant: Exception.

By Appellee: Laban Miles now offers in evidence, instrument marked Laban Miles' Exhibit 14, identified by the witness.

By Appellant: To which John Kenney objects as incompetent, irrelevant, and immaterial, and not approved by the Secretary of the Interior.

By the Court: Overruled.

By Appellant: Exception.

Q. I will ask you to examine instrument marked Laban Miles' Exhibit 11, and state whether or not that has been recorded and if so, where?

A. Journal 6, there is two pages on this and I am not certain which one is right, one is 28, and one 29.

Q. Well, I suppose it begins on page 28, and ends on page 29; it has been recorded in the Journal?

A. Yes sir.

(Leban Miles rests.)

(Witnesses for Appellant, after being duly sworn, testify as follows:

Direct examination.

71 John Kenny (by John Embry):

Q. State your name to the Court?

A. John Kenny.

Q. You are the John Kenny who appeared in this case from the County Court, are you?

A. Yes sir.

Q. And you are the son of Lah-tah-sah, deceased?

A. Yes sir.

Q. You are a full blood Osage Indian, are you John?

A. Yes sir.

Q. Have you ever received a certificate of competency?

A. No sir.

By Appellee: Objected to as incompetent, irrelevant and immaterial, and is not the best evidence.

By Appellant: I think he can swear whether he received a certificate or not.

By the Court: Overruled.

By Appellant: Exception.

Q. Was your mother, Lah-tah-sah, an Osage Indian, John?
A. Yes sir.
Q. Was she a full blood?
A. Yes sir.
Q. Dis she ever received a certificate or competency?
A. No, I don't believe she did.

By Appellee: Objected to as incompetent, irrelevant and immaterial, and not the best evidence.
By the Court: Not the best evidence, but I will let it go in, I will permit that as to the competency or incompetency of the deceased, Lah-tah-sah.
By Appellee: Exception.

Q. John, do you know Laban Miles?
A. Yes sir, I do.
72 Q. How long have you known him?
A. Well, I have known him since I can remember.
Q. John, do you know Eu-lah-wah-tah, a brother-in-law of Laban Miles?
A. Yes.

By Appellee: Objected to as incompetent, irrelevant and immaterial.
By the Court: Objection overruled as introduced.
By Appellee: Exception.

Q. Did you receive a horse given away by Eu-lah-wah-tah, given away in honor of Laban Miles and your mother?

By Appellee: Objected to as incompetent, irrelevant, and immaterial, and res adjudicata, having been adjudicated in the case of Laban Miles vs. John Kenney.
By the Court: Sustained.
By Appellant: Exception.

Q. Did you receive any presents at any time on account of any marriage between your mother and Laban Miles?
A. No sir.

By Appellee: Objected to for the reason that the same is incompetent, irrelevant and immaterial, and res adjudicata, having been determined in the judgment and pleaded in this case as res adjudicata.
By the Court: Sustained.
By Appellant: Exception.

Q. Did you at any time know of any presents, or see any presents given of any kind in honor of any marriage of any kind?

73 (By Appellee: Objected to as incompetent, irrelevant, and immaterial, having been determined in the suit heretofore between the witness and Laban Miles.
By the Court: Sustained.
By Appellant: Exception.

Q. Did you know of any feast in honor of any marriage between your mother and Laban Miles?

By Appellee: Objected to as incompetent, irrelevant, and immaterial, res adjudicata, as plead in the judgment of res adjudicata.
By the Court: Sustained.
By Appellant: Exception.

Q. John, when did your mother die?
A. I remember she died in August, 1908.
Q. Did she have any children living besides yourself at that time?
A. No sir.
Q. How long prior to that time had you been her only child?

By Appellee: Objected to as incompetent, irrelevant, and immaterial, and as res adjudicata.
By the Court: Sustained.
By Appellant: Exception.

Q. Was her mother living along in September, 1907, and from that time up until your mother's death?

By Appellee: Objected to as incompetent, irrelevant, and immaterial, and as res adjudicata.
By the Court: What is your object?
By Appellant: The object is to show that at the time it was claimed that there was a marriage, that the mother of Lah-tah-sah was living, and that certain brothers and sisters of Lah-tah-sah were living, and that according to the Osage Indian custom by which marriages might be consummated by people under the situation and circumstances of Laban Miles and Lah-tah-sah, it was necessary that messengers first be sent to the family of the woman, and
74 that presents and horses be given to the family and relatives, in purchase of the woman; it is for the purpose of controverting the issue of any marriage between Laban Miles and Lah-tah-sah.
By the Court: Objection sustained.
By Appellant: Exception.
By Appellant: Comes now John Kenney, and offers to show, and this witness will so testify, if permitted by the Court, that he is of the age of thirty-six years, that he is an Osage Indian of the full blood, now living, and has during his whole life, lived in the Osage Reservation of Oklahoma, and has learned and is well acquainted with the Osage Indian customs or marriage, and was, during the years 1907 and 1908, acquainted with the rule of marriage among the Osages according to Indian custom, and that he was at that time, during those years, acquainted with Laban Miles, and he knows that Laban Miles had been married prior to the year 1907, and that he knows that Lah-tah-sah, in 1907, and 1908, was a widow, having been previously married, and that persons of their age and situation and circumstances, to marry according to the Indian custom, is was necessary and it was then the custom that the man send messengers to the widow with his offer of marriage accompanied by gifts of horses and blankets, and while the offer of marriage is made direct

to the widow, she, wishing to conform as nearly as possible to the form of the marriage between persons that have not been previously married, referred such messengers and the gifts to her parents, if living, and to her nearest relatives, and let them decide for her; these parents and relatives confer upon the proposition, and if they are satisfied with the negotiations, they convey to the messengers
75 their consent, and by them send for the man; when the man arrives at the house of the relatives of the woman, they offer him a seat beside her, and the marriage is consummated without further ceremony; and further this woman will testify that no such proceeding or ceremony *were* ever had or performed in respect to any pretended marriage between Laban Miles and his mother, and that no gifts were ever offered, and that this woman was not informed and does not know of any marriage between the parties.

By Appellee: To which offer, Laban Miles objects and excepts, for the reason that the question of marriage of Laban Miles and Lah-tah-sah, deceased, has been adjudicated in the case of Laban Miles, plaintiff, vs. John Kenney, defendant, No. 1896, and the judgment thereon has been pleaded as res adjudicata in this action, and for the further reason that if the witness should so testify, that such testimony, would in the main be false for the reason that the marriage of Osage Indians under the Osage Indian custom, of the ages of Laban Miles and Lah-tah-sah, respectively, is not accomplished in the manner indicated in the offer, is not now the custom, and has never been the custom, and for these reasons, if the witness would so testify, the testimony would be false.

By the Court: Objection sustained, for the reason that any testimony which goes to the question of whether Laban Miles was the husband of Lah-tah-sah at the time of her death, has already been determined, and this court cannot take judicial notice of the same.

By Appellant: Exception.

76 Cross-examination.

(By H. P. White:)

Q. How old are you, John?
A. I think I must be thirty-five.
Q. You talk English, don't you?
A. Yes.
Q. You can testify without the aid of an Interpreter?
A. Yes sir.
Q. You can write, can't you?
A. How is that?
Q. Can you write? Can you write your name, and write letters?
A. Yes.
Q. And read?
A. Yes sir.
Q. In fact, you have a pretty good education, hav-n't you, John?
A. Well, pretty fair.
Q. Much better than the average Osage Indian?

By Appellant: Object to that comparison, as the witness is incompetent.

By the Court: Sustained.

77 Direct examination — John McGuire.

(By John Embry):

Q. State your name to the Court?

A. John H. McGuire.

Q. Where do you live, Mr. McGuire?

A. Pawhuska.

Q. How long have you lived here in Pawhuska?

A. About seventeen years.

Q. Did you, during the years 1907 and 1908, know Laban Miles?

A. Yes sir.

Q. And the Indian Woman, Lah-tah-sah, the deceased, John Kenney's mother?

A. I just knew her, yes sir, but I never was acquainted with her.

Q. I will ask you if at any time along in the summer of 1908 you had any conversation with Laban Miles about this woman?

By Appellee: Objected to as incompetent, irrelevant, and immaterial.

By the Court: Overruled.

By Appellee: Exception.

A. I don't remember exactly what year it was, but I think that was about the time.

Q. Do you know when she died, or was reported to have died?

A. Why no, I don't really know, I didn't pay any attention, I think though about shortly after I had this talk with Laban.

Q. Well, what I mean to say is, did you at the time, learn of the report of her death?

A. Yes, I heard about it.

Q. Now, this conversation to which you refer with Laban Miles, was how long before you heard of Lah-tah-sah's death?

A. I don't remember exactly how long it was, only a short time.

Q. Where did this conversation occur?

A. As well as I remember, it was down here in front of
78 Patterson's Drug Store or about there.

Q. What was that conversation, and what statement, if any, did Laban Miles make as to whether or not he was married to Lah-tah-sah?

By Appellee: Objected to as incompetent, irrelevant, and immaterial and the question of the marriage of Laban Miles and Lah-tah-sah, is res adjudicata.

By the Court: Sustained.

By Appellant: Exception. John Kenney now offers, and this witness will so testify, if permitted by the Court, that a short time before the death of the deceased, Lah-tah-sah, he knew the Indian, Laban Miles, herein, and Lah-tah-sah, and that at the time and place

just stated, here in the City of Pawhuska, a short time before Lah-tah-sah's death, he had a conversation with Laban Miles, in which he asked Laban Miles if he had married the woman, Lah-tah-sah, and Laban Miles stated that he had not.

By Appellee: To which offer Laban Miles objects to the same as incompetent, irrelevant, and immaterial, and concerning matters res adjudicata, the question of the marriage of Laban Miles and Lah-tah-sah, the decedent, having been fully adjudicated in the judgment rendered by the District Court of Osage County, Oklahoma, in the case of Laban Miles vs. John Kenney, pleaded as res adjudicata, in this action.

By the Court: Sustained.

By Appellant: Exception.

79 Cross-examination.

(By H. P. White):

Q. John, you testified in the case of Laban Miles, vs. John Kenny in the District Court?

A. What is the question?

Q. You were a witness in the case of Laban Miles against John Kenny, in the District Court?

A. I was subpœn-ed there, I don't know whether I answered any questions or not, I don't remember.

Q. You don't remember.

A. They subpœn-ed me, but I don't think they called me at the time.

Q. You were subpœn-ed by John Kenny as a witness on that case?

A. I don't know by whom, but I was subpœn-ed in the case.

By Appellant: John Kenny offers to prove by the witness, Tom-pah-pe, and said witness will so testify if permitted by the court, that she is the mother of Lah-tah-sah, the deceased, and was living in Osage County, Oklahoma, up until the death of Lah-tah-sah, and that she did not receive messengers, and did not receive presents, and was not advised of any marriage between Lah-tah-sah and Laban Miles, and that she did not consent to any marriage between Laban Miles and Lah-tah-sah.

By Appellee: To which Laban Miles objects for the reason same is incompetent, irrelevant and immaterial, the matters concerning which the testimony is offered being res adjudicata, having been fully adjudicated in the case of Laban Miles vs. John Kenny, No. 1896, pleaded as res adjudicata in this case.

By the Court: Sustained.

By Appellant: Exception.

80 By Appellant: John Kenny offers to prove by the witness, Grah-tah-su-ah, and such witness will so testify if permitted by the Court, that she is a sister of Lah-tah-sah, and is living and has lived in the Osage Indian Reservation and in Osage County for a great number of years, and that she did not receive messengers nor

presents, nor was she advised of any marriage between Laban Miles and Lah-tah-sah, and that she did not consent to such marriage.

By Appellee: Same Objection.

By the Court: Sustained.

By Appellant: Exception.

By Appellant: John Kenny, offers to prove by the witness, Pun-q-tah, and such witness will so testify if permitted by the Court, that she is a sister of Lah-tah-sah, and that she was not advised of any marriage between Lah-tah-sah and Laban Miles, and did not receive messengers nor presents on that account, and did not consent to any such marriage.

By Appellee: Same Objection.

By the Court: Sustained.

By Appellant: John Kenny excepts.

81 Direct examination — Mr. Woodward.

(By John Embry:)

Q. State your name?

A. A. T. Woodward.

Q. What is your business, Mr. Woodward?

A. Attorney for the Agency.

Q. The Osage Indian Agency?

A. Yes sir.

Q. That is an office now in the Agency and a part of the Agent's Force, is it not?

A. Yes sir.

Q. What are the duties of your office?

A. Of attending the hearings in the Probate Court and looking after the accounts of administrators and guardians, and certificates of competency, and generally any legal work in connection with the Agency.

Q. In looking after the certificates of competency, do you keep a record, and is that record kept for the purpose of showing, and does it show the names of the Indians for whom certificates of competency have been issued?

A. Yes sir.

Q. Is that record kept for the purpose of showing the names of all Osage Indians to whom certificates have been issued?

A. Yes sir.

Q. I will ask you if Laban Miles is a member of the Osage Tribe and of the full blood?

By Appellee: It is admitted that Laban Miles is a member of the Osage Tribe of Indians, and to whom no certificate of competency has been issued.

Q. And of the full blood? On what roll does Laban Miles appear?

A. On the full blood roll.

82 By Appellee: It is further admitted by Laban Miles that Lah-tah-sah, deceased, was a member of the Osage Tribe of Indians, to whom no certificate of competency was ever issued.

Q. The witness, John Kenny, you saw him here, didn't you?
A. I don't know whether I know John Kenny or not.
Q. I will ask you if the record shows any certificate of competency issued to him?
A. No certificate has been issued to John Kenny, no.
Q. None to Laban Miles and none to Lah-tah-sah?
A. No sir.
Q. Of what blood does the roll show Lah-tah-sah was?
A. Laban Miles, John Kenny, and Lah-tah-sah, all appear on the full-blood roll.
Q. I call your attention to this writing which is marked Laban Miles' Exhibit 4, purported to be a judgment rendered in the action therein described, at a time begun on the 25th day of April, 1913, and concluded some days later by Special Judge, R. B. Boone, pertaining to the lands and allotments referred to in the testimony of Thos. Leahy, and I will ask you if you have any records in your office showing that the Secretary of the Interior has approved that judgment, or any proceedings under it at any time?

By Appellee: Objected to for the reason that the record itself is the best evidence.
By the Court: Objection Sustained.
By Appellant: Exception.

Q. I will ask you if you or your office at any time had been advised of any partition of these lands allotted to Lah-tah-sah had been approved by the Secretary of the Interior?

By Appellee: Objected to as incompetent, irrelevant and immaterial, and not the best evidence.
By the Court: Sustained.
By Appellant: Exception.

83 Cross-examination.

(By H. P. White:)

Q. The roll of the membership of the Osage Tribe doesn't pretend to set forth the degree of the blood of the allottees, does it?
A. No, the roll is divided into what they call a full blood and mixed blood roll, but does not specify the degree of blood of each individual.
Q. And the fact that a name might appear on the full blood roll would be no evidence that that individual was a full blood.
A. It would be evidence of the fact that that allottee was considered a full blood.
Q. Well, as a matter of fact, do you know whether or not Laban Miles is a full blood?
A. No, I do not know that he is really a full blood.
Q. Do you know whether or not the name of Paul Albert appears on the full blood roll?
A. Yes, it does.
Q. And don't you know as a matter of fact that Paul Albert isn't a full-blood Osage?

A. No, I don't know that as a matter of fact.
Q. Don't you know that he is about one-fourth colored blood?
A. No, I don't know that as a matter of fact.
Q. Did you know his mother, Julia Whitetail?
A. I am not sure, I don't recall her.
Q. Did you know the Indian they called Aunt Lucy?

By Appellant: Objected to as not proper cross examination.
By the Court: Sustained.

Q. Do you know whether or not Aunt Lucy as we called her, was on the full blood roll?
A. Yes.

By Appellant: Objected to as not proper cross examination.
By the Court: Overruled.

84 Q. And don't you know that Aunt Lucy, although she was enrolled on the full blood roll, had very kinky hair, as kinky as the full blood negro?

By Appellant: Objected to as not proper cross examination.
By the Court: Sustained.

That each and all of said foregoing witnesses were duly sworn, before testifying, to testify to the truth, the whole truth, and nothing but the truth in the trial of said case.

By Appellant: John Kenny offers in evidence and asks the Stenographer to mark as Exhibit A, the entry on page 282, of the Allotment Deed Record, No. 1, Osage County, Oklahoma, formerly in the office of the Register of Deeds of Osage County, Oklahoma, and now in the office of the County Clerk and records of that office, being the Patent issued to Lah-tah-sah, and part of the land mentioned in Laban Miles' Exhibit No. 4.

By the Court: It may be received in evidence.

By Appellant: Also, John Kenny offers his exhibit B, and asks the Stenographer to so mark it, being page 247, of Homestead Deed Records of Osage County, formerly the records of the office of the Register of Deeds of said County, and now of the office of County Clerk of said County, being the Deed of Allotment of Lah-tah-sah, Osage Allottee No. 256.

By the Court: May be received.

By Appellant: It is agreed that Laban Miles is now fifty-six years old, and that Lah-tah-sah, deceased, was approximately fifty years old in 1909.

85 STATE OF OKLAHOMA,
Osage County, ss:

In the District Court in and for said County and State.

LABAN MILES, Plaintiff,

vs.

JOHN KENNY, Defendant.

Petition.

Comes now the plaintiff and for cause of action against the defendant, alleges and states:

1. That said plaintiff and the said defendant are the sole heirs of Lah-tah-sah, Osage Allottee No. 256, deceased. That by a deed dated September 28, 1908 recorded Mar. 2, 1909, in Book 1, of Homestead Deeds, page 247, in the office of the Register of Deeds for Osage County, Oklahoma, there was conveyed to Lah-tah-sah the following tract of land in Osage County, Oklahoma, towit:

N. W. ¼ of section 26, Township 24 North, Range 4 east of the Indian Meridian, containing 160 acres.

That by a deed dated May 15, 1909, recorded August 10, 1909, in Book 1 of Allotment Deeds, page 282, in the office of the Register of Deeds for Osage County, Oklahoma, there was conveyed to Lah-tah-sah, the following tracts of land in Osage County, Oklahoma, towit:

N. E. ¼ of Section 30, Township 28, Range 9; S. E. ¼ of Section 30, Township 28, Range 9; Lot 3, E. ½ of S. W. ¼ of N. W. ¼, S. E. ¼ of N. W. ¼, N. ½ of S. E. ¼ of Section 4, Township 20, Range 10, all North and East of the Indian Base and Meridian, containing 500.12 acres more or less.

2. That on or about the 19th day of August, 1908, said Lah-tah-sah died intestate, leaving surviving her Laban Miles, hus-
86 band, plaintiff, and John Kenny, an only child, the defendant. That plaintiff and defendant above named are the only heirs at law of said Lah-tah-sah, deceased, and on her death her said estate vested one-half in plaintiff and one-half in defendant. No other person has any interest or lien in, or right to said real estate; and said real estate is capable of being divided.

Wherefore, Plaintiff prays for a partition of said property, and that this court order and decree that the interest of plaintiff therein be an undivided one-half interest and that the interest of defendant John Kenny be an undivided one-half interest; and that partition of the said property be made accordingly, and that the court appoint three commissioners to make partition of said respective shares, and for such other order and relief as may be proper; and that the costs,

attorney fees and expenses which may accrue in this action be apportioned among the parties according to their respective interests.

LABAN MILES, *Plaintiff.*

Witness:
MINERVA MILES.

WHITE & WIDDOWS,
Attorneys for Plaintiff.

Endorsed: Filed this the 28 day of Feb'y 1913. Thos. Leahy, Jr., Clerk of the Dist. Court.

Corrected as per stipulation.
"Laban Miles' Ex. One."

87 In the District Court of Osage County, Oklahoma.

No. 1896.

LABAN MILES, Plaintiff,

vs.

JOHN KENNY, Defendant.

Answer and Cross Petition.

Comes now the defendant and for his answer and cross-petition in the above entitled action, denies each and every material allegation in plaintiff's petition contained, specifically and generally, except such as are herein especially admitted.

2. Defendant admits that Lah-tah-sah died intestate on or about the 19th day of August, 1908. That she was at the time of her death a member of the Osage tribe of Indians and that her allotment number was 256. That she died seized of the following described lands situated in Osage County, Oklahoma, towit: The Northwest quarter of section twenty-six (26), Township twenty-four (24), North, range four (4), East of the Indian Meridian, the Northeast quarter of section thirty (30), township twenty-eight (28), North, Range nine (9), east of the Indian Meridian, the Southeast quarter of section thirty (30) township twenty-eight (28) North, range nine (9) east of the Indian meridian, Lot three (3), the east half of the southwest quarter of the northwest quarter, the southeast quarter of the northwest quarter, the north half of the southeast quarter of section four (4), township twenty (20), North, range ten (10) east of the Indian meridian.

3. Defendant further admits that he is son of the said Lah-tah-sah, deceased, and alleges that he is her sole surviving heir at law, and that the said Lah-tah-sah at the time of her death left no other heirs or persons next of kin to her.

88 4. Defendant further says that he is now in the constructive possession of all of the said described lands and that he

is the sole and absolute owner thereof by reason of having inherited the same from his mother the said Lah-tah-sah and that he is entitled to the immediate, actual and exclusive possession thereof, and of every tract and portion thereof. That the claim of the plaintiff, Laban Miles, as set out in plaintiff's petition, constitutes a cloud on defendant's title.

Wherefore, Defendant prays judgment of the court that plaintiff take nothing by reason of his alleged cause of action, that defendant be adjudged and decreed by the court to be the sole, absolute owner of the said described lands and of every tract and portion thereof, and entitled to the immediate and exclusive possession thereof. That the plaintiff be adjudged and decreed by the court to have no right, title, estate or interest in or to the said described lands or to any part or portion thereof, and that the plaintiff be forever barred and precluded from claiming or asserting any right, title or interest therein or thereto, and that defendant's title be adjudged to be the only sole and exclusive title therein, and that the title in and to the said described lands and every part and portion thereof be quieted in the defendant, and that defendant have his costs herein incurred and have such other and further relief as to the court may seem meet, just and equitable.

HARGIS & CONWELL,
Attorneys for Defendant.

*Neod*rsed: Filed Mar. 11, 1913. Thos. Leahy, Jr., Clerk District Court. By Eula B. Foley, Deputy.

"Laban Miles' Ex. 2."

89 In the District Court of Osage County, Oklahoma.

No. 1896.

LABAN MILES, Plaintiff,

vs.

JOHN KENNY, Defendant.

Reply.

Comes now the above named plaintiff and for reply to the answer and cross-petition filed herein by above named defendant, denies each and every allegation therein contained inconsistent with those contained in petition of plaintiff, and prays for judgment as in his petition herein filed.

LABAN MILES, *Plaintiff.*

WHITE AND WIDDOWS,
Attorneys for Plaintiff.

Endorsed: Filed this the 12th day of March, 1913. Thos Leahy, Jr., Clerk of the Dist. Court. By Eula B. Foley, Deputy Clerk.

"Laban Miles' Ex. 3."

90 In the District Court in and for Osage County, Oklahoma.

No. 1896.

LABAN MILES, Plaintiff,

vs.

JOHN KENNY, Defendant.

Journal Entry.

On the 25th day of April 1913, same being a regular judicial day of the March 1913 term of said court, the above entitled cause came on for hearing in its regular order, pursuant to agreement of the parties, before R. B. Boone, Special Judge agreed upon by the parties. The plaintiff appearing in his own proper person and by White & Widdows, his attorneys, and the defendant appearing in his own proper person and by Hargis & Conwell, his attorneys, and all parties waived trial by jury, and announced ready for trial by the court. And thereupon the plaintiff began the introduction of his testimony and said cause was on trial in said court before said Special Judge, all parties being present in their own proper persons and by their attorneys, as hereinabove set forth, on the 25th, 26th of April 1913, and on the 26th of April the trial was adjourned to the 29th day of April 1913 at noon, at which time said trial was resumed before said Special Judge, all parties being present in their own proper persons and by their attorneys, and continued on trial from noon of April 29th to May 2nd, inclusive, during which said time the plaintiff introduced his testimony and rested and the defendant introduced his testimoney and rested, and thereupon the plaintiff offered his testimony in rebut-al and rested. And the court after examination of the pleadings and hearing the arguments of counsel in behalf of the respective parties, took the case under advisement pursuant to consent and agreement of counsel of the respective parties and stipulation of counsel for both parties filed in said cause; and,

Now on this 31st day of May 1913 after due consideration
91 of all the evidence and the arguments of counsel, and being fully advised in the premises, the Court finds the following facts:

That in September, 1907, the plaintiff, Laban Miles, after having been divorced from his former wife, Wah-shah-she-me-tsa-he, according to Osage Indian custom, entered into an agreement with Lah-tah-sah whereby he and Lah-tah-sah agreed to become man and wife. That both were full blood members of the Osage Indian Tribe and unmarried at the time. That they thereupon assumed the marriage relation and continued to sustain that relation up to the time of Lah-tah-sah's death on August 19th, 1908, a period of eleven months. That the morning after they assumed such relationship, the defendant John Kenny, the son of Lah-tah-sah, by a former

husband, received a horse given away by Hlu-ah-wah-tah, the brother-in-law of plaintiff, Laban Miles, in honor of the marriage of Laban Miles and Lah-tah-sah, in accordance with Osage Indian custom, which horse defendant sold, appropriating the money to his own use. That on said morning other presents were given in accordance with the custom of Osage Indians at the marriage of Indians of the age of Laban Miles and Lah-tah-sah and who had been theretofore married. That a feast was given in honor of said marriage on the morning after Laban Miles brought Lah-tah-sah to his home, but neither Laban Miles nor Lah-tah-sah were at said feast. They Laban Miles and Lah-tah-sah went to the Osage Indian Agent and had themselves enrolled as man and wife, and a trading card was issued to Laban Miles on his own and Lah-tah-sah's quarterly annuities and payments. That Laban Miles and Lah-tah-sah were recognized by the Indians with whom they associated as man and wife until Lah-tah-sah's death. That they were also so recognized during this time by the Osage Indian Agency and the Interior Department. That after assuming said relationship in September 1907, they signed various papers to borrow money as man and wife, and held themselves out as such and were so recognized by those who dealt with them in a business way.

To all of which findings of fact the defendant excepts.

92 *Conclusions of Law.*

That plaintiff, Laban Miles, and Lah-tah-sah, Osage Allottee No. 256, were husband and wife at the time of the death of said Lah-tah-sah; that plaintiff, Laban Miles, is the surviving husband of said Lah-tah-sah, and as such is the owner of an undivided one-half interest in and to the lands described in plaintiff's petition. To all of which the defendant excepts.

The court further finds that Lah-tah-sah, Osage Allottee No. 256, died intestate on or about the 19th day of August, 1908, leaving an estate consisting in part of the lands described in plaintiff's petition.

The court further finds that the plaintiff, Laban Miles, and defendant, John Kenny, above named are the only heirs at law of said Lah-tah-sah, deceased, and as such plaintiff Laban Miles owns an undivided one-half interest, and the defendant John Kenny owns an undivided one-half interest in and to the lands allotted and deeded to said Lah-tah-sah, described in plaintiff's petition, towit:

N. W. ¼ of section 26, Township 24, Range 4, N. E. ¼ of section 30, Township 28, Range 9; S. E. ¼ of Section 30, Township 28, Range 9; Lot 3, E. ½ of S. W. ¼ of N. W. ¼, S. E. ¼ of N. W. ¼, N. ½ of S. E. ¼ of section 4, Township 20, Range 10, all North and East of the Indian Base and Meridian in Osage County, Oklahoma.

The court further finds that no part of the lands described was ever used, occupied or claimed by said Lah-tah-sah, deceased, or any of the parties to this action as a homestead, and that no part of same was the homestead of said Lah-tah-sah, or of any of the parties to

this action. The court further finds that the parties hereto have been unable to agree upon a partition or division of said lands.

It is therefore ordered, adjudged and decreed by the court that the plaintiff, Laban Miles, and the defendant, John Kenny, are the owners in common of the lands described, and their respective interests and ownership therein is as follows:

93 Laban Miles, plaintiff, Osage Allottee No. 507, an undivided one-half.

John Kenny, defendant, Osage Allottee No. 257, an undivided one-half.

and that the shares of the aforesaid parties and their respective interests in the lands above described as above set forth, be and the same are hereby confirmed. It is further ordered, adjudged and decreed by the court that partition of said lands be made accordingly; that W. T. Mosier, J. W. Soderstrom, and W. E. Savage, are hereby appointed commissioners to make partition of said property among the parties according to their respective interests as herein fixed and determined, if such partition can be made without manifest injury. But if such partition cannot be made, the commissioners herein named shall make a valuation and appraisement of the property herein described and make a report of their proceedings to the court.

R. B. BOONE,
Special Judge.

Endorsed: Filed this the 31 day of May, 1913. Thos. Leahy, Jr., Clerk of the Dist. Court.

Recorded Jour. 5, page 326.
"Laban Miles' Ex. 4."

94 In the District Court of Osage County, Oklahoma.

No. —.

LABAN MILES, Plaintiff,

vs.

JOHN KENNY, Defendant.

Motion for a New Trial.

Comes now the defendant and moves the Court to grant a new trial of the above entitled action for the following reasons, towit:

1. Irregularity in the proceedings of the court and prevailing party and the abuse of discretion by which the defendant was prevented from having a fair trial.

2. Misconduct of the court and of the prevailing party.

3. Accident and surprise which the defendant could not have guarded against by the exercise of ordinary prudence.

4. Newly discovered evidence material to the defendant which he could not with reasonable diligence have discovered and produce- at the trial.

5. Error of law occurring at the trial and excepted to by the defendant.

6. Error by the court in the admission of incompetent, irrelevant and immaterial evidence on behalf of the plaintiff, duly excepted to by the defendant.

7. Error by the court in the rejection of competent, relevant and material evidence offered on the defendant's behalf.

Wherefore, Defendant prays that his motion be sustained.

HARGIS & CONWELL,
Attorneys for Defendant.

Endorsed: Filed May 31, 1913. Thos. Leahy, Jr., Clerk District Court.

"Laban Miles' Exhibit 5."

95 In the District Court of Osage County, State of Oklahoma.

No. 1896.

LABAN MILES, Plaintiff,

vs.

JOHN KENNY, Defendant.

Journal Entry Overruling Motion for New Trial.

Now on this 19th day of July, 1913, same being a regular judicial day of the June, 1913, term of said court, this matter came on for further hearing in its regular order before Hon. R. B. Boone, Special Judge, upon defendant's motion for new trial; the plaintiff appearing by his attorneys, White & Widdows, and the defendant appearing by his attorneys, Hargis & Conwell, and Leahy & Macdonald; and the court having heard the argument of counsel for the respective parties and being fully advised in the premises, finds that said motion for a new trial should be overruled.

It is therefore ordered, adjudged and decreed that the defendant's motion for a new trial be and the same hereby is by the court overruled, to the overruling of said motion for a new trial the defendant excepted and excepts, and for good cause shown the defendant is hereby given 120 days in which to make and serve a case-made; the plaintiff is given 20 days thereafter in which to suggest amendments, case made to be settled and signed upon five days' written notice by either party. Defendant is given forty days in which to

file good and sufficient supersedeas bond, to be approved by the clerk of this court, in the sum of $500.00.

R. B. BOONE,
Special Judge.

O. K.

WHITE & WIDDOWS,
Attorneys for Plaintiff.
HARGIS & CONWELL,
Attorneys for Defendant.

Endorsed: Filed this the 5th day of August, 1913. Thos. Leahy, Jr., Clerk of the District Court, by A. B. Cotter, Deputy Clerk.

Recorded Jour. 5, page 455.

"Laban Miles' Ex. 6."

96 In the District Court of Osage County, Oklahoma.

No. 1896.

LABAN MILES, Plaintiff,

vs.

JOHN KENNY, Defendant.

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above entitled action, that R. B. Boone, the Special Judge agreed upon by the parties to this action, may continue to act as Special Judge in the above entitled action after the expiration of the present term of court, and at or during any subsequent term of the district court of Osage County, Oklahoma, and to do and perform all things necessary or proper in said matter, and to make any order, ruling, decision or judgment, at any subsequent term, that may be necessary or proper; and the parties hereto hereby waive any and all objections thereto.

Dated this 3rd day of May, 1913.

WHITE & WIDDOWS,
Attorneys for Plaintiff.
HARGIS & CONWELL,
Attorneys for Defendant.

Endorsed: Filed May 3, 1913. Thos. Leahy, Clerk District Court.

"Laban Miles' Ex. 7."

97 In the District Court of Osage County, Oklahoma.

No. 1896.

LABAN MILES, Plaintiff,

vs.

JOHN KENNY, Defendant.

Stipulation.

Now on this 8th day of April, 1913, it is hereby stipulated and agreed by and between the parties to the above entitled cause, by and through their respective attorneys of record that R. B. Boone, Senior, be appointed as Special Judge to try the above entitled cause, the regular trial Judge having requested that a special Judge be agreed upon or elected to try said case for the reason that he had represented one of the parties as counsel in said matter prior to his election to the bench.

WHITE & WIDDOWS,
Attorneys of Record for Laban Miles.
HARGIS & CONWELL,
Attorneys of Record for John Kenny.

Endorsed: Filed Apr. 8, 1913. Thos. Leahy, Jr., Clerk District Court, by Eula B. Foley, Deputy.

"Laban Miles' Ex. 8."

98 In the District Court of Osage County, Oklahoma.

LABAN MILES, Plaintiff,

vs.

JOHN KENNY, Defendant.

Oath of John A. Gardner.

STATE OF OKLAHOMA,
Osage County, ss:

I do solemnly swear that I will truly, honestly, fairly and impartially, to the best of my ability, appraise the land involved in the above entitled action.

JOHN A. GARDNER.

Sworn to and subscribed before me this 8 day of January, 1914.
[SEAL.] THOS. LEAHY, JR.,
Clerk Dist. Court.

My com. exp. —— —, ——.

Endorsed: Filed this 8th day of January, 1914. Thos. Leahy, Jr., Clerk Dist. Court, by A. D. Cotter, Deputy Clerk.

"Laban Miles' Ex. 9."

99 In the District Court of Osage County, Oklahoma.

No. 1896.

LABAN MILES, Plaintiff,

vs.

JOHN KENNY, Defendant.

Oath of Commissioners.

I, W. E. Savage, J. W. Soderstrom and John G. Gardner, Commissioners heretofore appointed by the Court on the 24th day of May, 1913, to make partition in the above entitled cause between the parties thereto according to their respective interests, do solemnly swear that I will support, obey and defend the constitution of the United States, and the constitution of the State of Oklahoma, and will discharge the duties of my office with fidelity, faithfully and impartially, to the best of my ability; that I have not paid or contributed, either directly or indirectly, any money or other valuable thing, to procure my nomination or appointment, except for necessary and proper expenses expressly authorized by law; that I have not, knowingly, violated any election law of the State, or procured it to be done by others in my behalf; that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law, and I further swear that I will not receive, use or travel upon any free pass or on free transportation during my term of office.

W. E. SAVAGE,
J. W. SODERSTROM,
Commissioners.

Subscribed and sworn to before me this 8 day of December, 1913.

[SEAL.] THOS. LEAHY, JR.,
Clerk Dist. Court.

Endorsed: Filed this 8th day of January, 1914. Thos. Leahy, Jr., Clerk District Court, by A. B. Cotter, Deputy Clerk.

"Laban Miles' Ex. 10."

100 In the District Court of Osage County, Oklahoma.

LABAN MILES, Plaintiff,

vs.

JOHN KENNY, Defendant.

Comes now W. T. Mosier and shows to the Court that on the 24th day of May, 1913, he was appointed by the Court as one of the commissioners to make partition of the lands involved in the above proceeding. That he hereby resigns from said appointment and asks that his resignation be accepted and someone else appointed in his place.

W. T. MOSIER.

Endorsed: Filed Dec. 24, 1913. Thos. Leahy, Jr., Clerk District Court, by A. B. Cotter, Deputy.

"Laban Miles' Ex. 11."

101 STATE OF OKLAHOMA,
Osage County, ss:

In the District Court in and for Osage County, Oklahoma.

No. 1896.

LABAN MILES, Plaintiff,

vs.

JOHN KENNY, Defendant.

Report of Commissioners.

Comes now the undersigned, W. E. Savage, J. W. Soderstrom, and John A. Gardner, and represent to the court that W. E. Savage and J. W. Soderstrom were on the 24th day of May, 1913, and John G. Gardner was on the 24th day of December, 1913, duly and regularly appointed to make partition between the plaintiffs and said defendants of the lands hereinafter described situated in Osage County, Oklahoma, and herewith submit the following report of their doings under said order and appointment as such commissioners.

That before entering upon the discharge of our duties as such commissioners in partition, we each made and subscribed an oath of office to perform our said duties faithfully and impartially to the best of our ability, said oath being filed in this court in the above entitled cause.

That we thereafter made inspection of and considered said property to be partitioned, and found the same was not susceptible of par-

tition in kind between the plaintiff and defendant without manifest injury, and that after considering and viewing said property with reference to its quantity, location and value, we made the following valuation and appraisement of the same, said property being appraised in separate parcels, tracts and bodies, in such way as to make it saleable and to bring the highest possible market value, that is to say:

N. W. ¼ of section 26, Township 24, Range 4, containing 160 acres	$2,400.00
E. ½ of section 30, Township 28, Range 9, containing 320 acres	960.00
102 Lot 3, E. ½ of S. W. ¼ of N. W. ¼, S. E. ¼ of N. W. ¼ of Section 4, Township 20, Range 10, containing 100.12 acres	$300.00
N. ½ of S. E. ¼ of Section 4, Township 20, Range 10, containing 80 acres	$240.00
All north and east of the Indian Meridian in Osage County, Oklahoma.	
Total	$3,900.00

That all of said appraisement of said above described and valued tracts of lands was made after inspecting the same, and is a fair, reasonable, market value thereof.

Your Commissioners further report that having appraised all the property described in said petition and in the order of the court appointing us as such appraisers, we respectfully return herewith this our report with the request that same be accepted and that we be discharged herefrom.

W. E. SAVAGE,
JOHN A. GARDNER,
J. W. SODERSTROM,
Commissioners.

Subscribed and sworn to before me this 8 day of January, 1914.

[SEAL.] THOS. LEAHY, JR.,
Clerk of the District Court.

Cost Certificate.

STATE OF OKLAHOMA,
Osage County, ss:

We the undersigned Commissioners in partition in the foregoing entitled case, hereby certify that in the performance of our duties as such commissioners in this cause, we incurred the following items of expense, towit:

4 days' time for each Commissioner at $5.00 per day..... $40.00
Livery hire, railroad fare, etc..... $24.00

Total $64.00

which said sum we ask the court to allow us for our said services.

W. E. SAVAGE,
J. W. SODERSTROM,
Commissioners.

Endorsed: Filed this the 8 day of January 1914. Thos. Leahy, Jr., Clerk Dist. Court.

"Laban Miles' Ex. 12."

103 In the District Court in and for Osage County, Oklahoma.

No. 1896.

LABAN MILES, Plaintiff,

vs.

JOHN KENNY, Defendant.

Motion to Accept Report.

Comes now the plaintiff and shows to the Court that the Commissioners appointed by the Court to make partition of the property among the parties according to their respective interests as described and fixed by the judgment of this court rendered on the 24th day of May, 1913, have filed herein their report of their proceedings thereunder, from which it appears that the same is not susceptible of partition in kind among the respective parties without manifest injury, for which reason a valuation and appraisement has been made and returned by said Commissioners.

Wherefore plaintiff moves the Court to accept and confirm the report of said Commissioners and to make an order for the sale of the property therein described and appraised.

LABAN MILES, *Plaintiff,*
By WHITE & WIDDOWS,
His Attorneys.

Endorsed: Filed Jan. 10, 1914. Thos. Leahy, Jr., Clerk District Court, By A. B. Cotter, Deputy.

"Laban Miles' Ex. 13."

104 In the District Court of Osage County, Oklahoma.

No. 1896.

LABAN MILES, Plaintiff,

vs.

JOHN KENNY, Defendant.

Order of Sale.

Now on this 24 day of January, 1914, a regular judicial day of the January 1914 term of said court, it appearing to the court that the Commissioners appointed to make partition of the property herein among the parties according to their respective interests have filed herein their report of their proceedings thereunder, from which it appears that the same is not susceptible of partition in kind among the respective parties without manifest injury; and it further appearing to the Court that said commissioners have made a valuation and appraisement of the property and that the same is a fair, reasonable market value thereof. It further appearing to the court that before commencing on their duties the commissioners herein subscribed to and filed in this court their oath of office as required by law, and that the said commissioners have in all things performed their duties faithfully and impartially, to the best of their ability.

It is therefore ordered, adjudged and decreed that the report of said commissioners be and same hereby is accepted, and confirmed, and said commissioners are hereby discharged from further duty herein.

It is further ordered by the court that the Sheriff of Osage County, Oklahoma, be and he hereby is directed to sell said real estate in the same manner as in sales of real estate on execution; that he cause public notice of the time and place of sale to be given, for at least thirty days before the day of sale, by advertisement in some newspaper printed in Osage County, Oklahoma.

R. B. BOONE,
Special Judge.

105 THOS. LEAHY, JR.,
Clerk of District Court,

[SEAL.] By A. B. COTTER, *Deputy.*

Recorded Jour. 6, pages 228-229.

Endorsed: Filed Jan. 24, 1914. Thos. Leahy, Jr., Clerk District Court. By A. B. Cotter, Deputy.

"Laban Miles' Ex. 14."

106 *Judgment Docket, District Court, — County, Oklahoma.*

Date of Judgment: 1896, May 31-13.
Date of Entry of Judgment: Mar. 12-15.
Judgment Debtor: John Kenny.
Judgment Creditor: Laban Miles.
Am't of Judgment: Partition of Real Estate.

"Laban Miles' Ex. 15."

107 In the District Court in and for Osage County, Oklahoma.

No. 1896.

LABAN MILES, Plaintiff,

vs.

JOHN KENNY, Defendant.

Journal Entry.

On the 25th day of April 1913, same being a regular judicial day of the March 1913 term of said court, the above entitled cause came on for hearing in its regular order, pursuant to agreement of the parties, before R. B. Boone, Special Judge agreed upon by the parties. The plaintiff appearing in his own proper person and by White & Widdows, his attorneys, and the defendant appearing in his own proper person and by Hargis & Conwell, his attorneys, and all parties waived trial by jury, and announced ready for trial by the court. And thereupon the plaintiff began the introduction of his testimony and said cause was on trial in said court before said Special Judge, all parties being present in their own proper persons and by their attorneys, as hereinabove set forth, on the 25th, 26th of April 1913, and on the 26th of April the trial was adjourned to the 29th day of April 1913 at noon, at which time said trial was resumed before said Special Judge, all parties being present in their own proper persons and by their attorneys, and continued on trial from noon of April 29th to May 2nd, inclusive, during which said time the plaintiff introduced his testimony and rested and the defendant introduced his testimonoy and rested, and thereupon the plaintiff offered his testimony in rebut-al and rested. And the court after examination of the pleadings and hearing the arguments of counsel in behalf of the respective parties, took the case under advisement pursuant to consent and agreement of counsel of the respective parties and stipulation of counsel for both parties filed in said cause; and,

Now on this 31st day of May 1913 after due consideration
108 of all the evidence and the arguments of counsel, and being fully advised in the premises, the Court finds the following facts:

That in September, 1907, the plaintiff, Laban Miles, after having been divorced from his former wife, Wah-shah-she-me-tsa-he, according to Osage Indian custom, entered into an agreement with Lah-tah-sah whereby he and Lah-tah-sah agreed to become man and wife. That both were full blood members of the Osage Indian Tribe and unmarried at the time. That they thereupon assumed the marriage relation and continued to sustain that relation up to the time of Lah-tah-sah's death on August 19th, 1908, a period of eleven months. That the morning after they assumed such relationship, the defendant John Kenny, the son of Lah-tah-sah, by a former husband, received a horse given away by Hlu-ah-wah-tah, the brother-in-law of plaintiff, Laban Miles, in honor of the marriage of Laban Miles and Lah-tah-sah, in accordance with Osage Indian custom, which horse defendant sold, appropriating the money to his own use. That on said morning other presents were given in accordance with the custom of Osage Indians at the marriage of Indians of the age of Laban Miles and Lah-tah-sah and who had been theretofore married. That a feast was given in honor of said marriage on the morning after Laban Miles brought Lah-tah-sah to his home, but neither Laban Miles nor Lah-tah-sah were at said feast. They Laban Miles and Lah-tah-sah went to the Osage Indian Agent and had themselves enrolled as man and wife, and a trading card was issued to Laban Miles on his own and Lah-tah-sah's quarterly annuities and payments. That Laban Miles and Lah-tah-sah were recognized by the Indians with whom they associated as man and wife until Lah-tah-sah's death. That they were also so recognized during this time by the Osage Indian Agency and the Interior Department. That after assuming said relationship in September 1907, they signed various papers to borrow money as man and wife, and held themselves out as such and were so recognized by those who dealt with them in a business way.

To all of which findings of fact the defendant excepts.

109 *Conclusions of Law.*

That plaintiff, Laban Miles, and Lah-tah-sah, Osage Allottee No. 256, were husband and wife at the time of the death of said Lah-tah-sah; that plaintiff, Laban Miles, is the surviving husband of said Lah-tah-sah, and as such is the owner of an undivided one-half interest in and to the lands described in plaintiff's petition. To all of which the defendant excepts.

The court further finds that Lah-tah-sah, Osage Allottee No. 256, died intestate on or about the 19th day of August, 1908, leaving an estate consisting in part of the lands described in plaintiff's petition.

The court further finds that the plaintiff, Laban Miles, and defendant, John Kenny, above named are the only heirs at law of said Lah-tah-sah, deceased, and as such plaintiff Laban Miles owns an undivided one-half interest, and the defendant John Kenny owns an undivided one-half interest in and to the lands allotted and deeded to said Lah-tah-sah, described in plaintiff's petition, to wit:

N. W. ¼ of section 26, Township 24, Range 4, N. E. ¼ of section 30, Township 28, Range 9; S. E. ¼ of Section 30, Township 28, Range 9; Lot 3, E. ½ of S. W. ¼ of N. W. ¼, S. E. ¼ of N. W. ¼, N. ½ of S. E ¼ of section 4, Township 20, Range 10, all North and East of the Indian Base and Meridian in Osage County, Oklahoma.

The court further finds that no part of the lands described was ever used, occupied or claimed by said Lah-tah-sah, deceased, or any of the parties to this action as a homestead, and that no part of same was the homestead of said Lah-tah-sah, or of any of the parties to this action. The court further finds that the parties hereto have been unable to agree upon a partition or division of said lands.

It is therefore ordered, adjudged and decreed by the court that the plaintiff, Laban Miles, and the defendant, John Kenny, are the owners in common of the lands described, and their respective interests and ownership therein is as follows:

110 Laban Miles, plaintiff, Osage Allottee No. 507, an undivided one-half.

John Kenny, defendant, Osage Allottee No. 257, an undivided one-half.

and that the shares of the aforesaid parties and their respective interests in the lands above described as above set forth, be and the same are hereby confirmed. It is further ordered, adjudged and decreed by the court that partition of said lands be made accordingly; that W. T. Mosier, J. W. Soderstrom, and W. E. Savage, are hereby appointed commissioners to make partition of said property among the parties according to their respective interests as herein fixed and determined, if such partition can be made without manifest injury. But if such partition cannot be made, the commissioners herein named shall make a valuation and appraisement of the property herein described and make a report of their proceedings to the court.

R. B. BOONE,
Special Judge.

Endorsed: No. 1896. In the District Court of Osage County, Oklahoma, Laban Miles, vs. John Kenney. Journal Entry. Filed this the 31st day of May, 1913. Thos. Leahy, Jr., Clerk of the Dist. Court. White & Widdows, Pawhuska, Okla., att'ys, for plaintiff.

Added by stipulation: "Recorded in Jour. 5 page 326.

"Laban Miles' Ex. 16."

111 7954. *Allotment Deed.* 282.

Allotment Deed, Osage Reservation, Oklahoma.

Allotment No. 256.

Osage Indian Lands from Peter C. Bigheart, Principal Chief,
to
Lah-tah-sah.

STATE OF OKLAHOMA,
Osage County, ss:

The within instrument was filed for record on the 10 day of Aug. 1909, at 10 o'clock A. M., and recorded in Book 1 A. D. on page 282.

[SEAL.] T. M. BROADDUS,
Register of Deeds.

To all to whom these presents shall come, Greeting:

Whereas The Act of Congress approved June 28, 1906, entitled "An Act for the division of the lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes" (34 Stat. L., 539) provides that all the lands belonging to the Osage Tribe of Indians in Oklahoma, except as therein provided, shall be divided among the members of said tribe; and

Whereas, said Act of Congress further provides that all lands selected by and allotted to each member (except his homestead) shall be designated "surplus lands"; and

Whereas, Lah-tah-sah, a duly enrolled and recognized member of the Osage Tribe, has selected his homestead in accordance with law; and

Whereas, The Osage Allotting Commission, as provided for in the sixth Sub-Division of Section 2 of said Act of Congress, has certified that the lands hereinafter described constitute the surplus lands of said Lah-tah-sah, as contemplated by said Act of Congress; and

Whereas, Section 8 of the Act provides that all deeds to said Osage lands, or any part thereof, shall be executed by the Principal Chief of the Osages, but no such deed shall be valid until approved by the Secretary of the Interior;

112 Now, therefore, I, the undersigned, Principal Chief of the Osage Tribe of Indians, by virtue of the power and authority vested in me by the said act of Congress have granted and conveyed, and by these presents do grant and convey, unto the said Lah-tah-sah, all right, title, and interest of the United States and the Osage Tribe of Indians in and to the following described lands situated on the Osage Reservation in Oklahoma, to wit:

Northeast ¼ of Section (30), Township twenty-eight (28), Range Nine (9); Southeast ¼ of Section Thirty (30), Township Twenty-eight (28), Range Nine (9); Lot three (3), East ½ of Southwest ¼

of Northwest ¼, Southeast ¼ of Northwest ¼, North ½ of Southeast ¼ of Section Four (4), Township twenty (20), Range Ten (10); all North and east of Indian Base and Meridian, containing 500.12 acres, more or less, according to the United States survey thereof, to have and to hold the same unto the said Lah-tah-sah, her heirs, executors, administrators and assigns, forever; subject, however, to all the conditions, limitations, and provisions of said Act of Congress, one of which is that the oil, gas, coal, or other minerals covered by the lands for the selection and *vidision* of which provision is herein made are hereby reserved to the Osage Tribe for a period of twenty-five years from and after the eighth day of April, nineteen hundred and six.

In witness whereof, I, the Principal Chief of the Osage Tribe of Indians, have hereunto set my hand and seal this 5th day of May, 1909.

All erasures and interlineations made before signing hereof.

PETER C. BIGHEART, [SEAL.]
Principal Chief of the Osages.

Witnesses:

L. H. HAUSS.
ORLO C. LOWRY.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS, Jul- 26, 1909.

The foregoing is respectfully submitted to the Secretary of the Interior with the recommendation that it be approved.

F. H. ABBOTT,
Assistant Commissioner.

DEPARTMENT OF THE INTERIOR, Jul- 30, 1909.

The foregoing deed is hereby approved.

FRANK PIERCE,
Acting Secretary.

"John Kenny's Ex. A."

113 4870. *Homestead Deed.* 247.

Homestead Deed, Osage Reservation, Oklahoma.

Allotment No. 256.

Homestead Deed, Osage Indian Lands, from Peter Bigheart, Principal Chief,

to

Lah- tah-sah.

#256.

STATE OF OKLAHOMA,
Osage County, ss:

The within instrument was filed for record on the 2 day of Mar. 1909, at 2 o'clock P. M., and recorded in Book 1, H. D. on page 247.
[SEAL.] T. M. BROADDUS,
Register of Deeds.
By —— ——, *Deputy.*

OFFICE OF INDIAN AFFAIRS,
LANDS DIVISION,
—— —, 19—.

Recorded in Deed Book, Osage Indian Lands, Vol. —, Page —.

To all to whom these presents shall come, Greeting:

Whereas, The Act of Congress approved June 28, 1906, entitled "An Act for the division of the lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes" (34 Stat. L., 539), provides that all the lands belonging to the Osage Tribe of Indians in Oklahoma, except as therein provided, shall be divided among the members of said tribe; and

Whereas, said Act of Congress further provides that each member of the tribe may make three selections of land of one hundred and sixty acres each; and that after these selections have been made each member of the tribe may designate which selection shall be his homestead, and that the certificates of allotment and deed shall designate the homestead selection; and

Whereas, the Osage Allotting Commission, as provided for in the Sixth Sub-Division of Section 2 of the Act, has certified that the land hereinafter described has been designated by or on behalf of Lah-tah-sah, a duly enrolled and recognized member of the Osage tribe, as *his* homestead; and

Whereas, Section 8 of the Act provides that all deeds to said Osage lands, or any part thereof, shall be executed by the
114 Principal Chief of the Osages, but no such deed shall be valid until approved by the Secretary of the Interior;

Now, therefore, I, the undersigned, Principal Chief of the Osage Tribe of Indians, by virtue of the power and authority vested in me by the said Act of Congress have granted and conveyed, and by these presents do grant and convey, unto the said Lah-tah-sah, all right, title, and interest of the United States and the Osage Tribe of Indians in and to the following described lands situated on the Osage Reservation in Oklahoma, towit:

Northwest quarter of section twenty-six (26); Township twenty-four (24), North, Range Four (4) East of the Indian Meridian, containing 160.00 acres, more or less, according to the United States survey thereof, to have and to hold the same unto the said Lah-tah-sah, her heirs, executors, administrators, and assigns, forever; subject, however, to all the conditions, limitations, and provisions of said Act of Congress, one of which is that the homestead selection shall be inalienable and non-taxable until otherwise provided by Act of Congress, and all mineral in said land reserved to the Osage Tribe of Indians for the period of twenty-five years from and after the eighth day of April, 1906.

In witness whereof, I, the Principal Chief of the Osage Tribe of Indians, have hereunto set my hand and seal this 23rd day of September, 1908.

PETER C. BIGHEART, [SEAL.]
Principal Chief of the Osages.

Witnesses:

HEALY M. LOOMER.
LINFRED H. HAUSS.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS, Jan. 19, 1909.

The foregoing is respectfully submitted to the Secretary of the Interior with the recommendation that it be approved.

R. G. VALENTINE,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR, Feb. 20, 1909.

The foregoing deed is hereby approved.

JESSE E. WILSON,
Assistant Secretary.

"John Kenney's Ex. B."

115 In the District Court in and for Osage County, State of Oklahoma.

No. —.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee No. 256, Deceased, on Appeal from the County Court of Osage County, Oklahoma.

Reporter's Certificate.

I, Florene Isnard, the duly appointed, qualified and acting Court Reporter, in and for the District Court of the 24th Judicial District, in and for Osage County, Oklahoma, in the above entitled cause, hereby certify that on the 2nd day of April, 1915, at and under the direction of the court, I faithfully and accurately reported all the oral testimony, objections and exceptions of parties, rulings of the court, matters and proceedings had and done in the trial of the above entitled cause; that I later reduced my shorthand notes so taken to typewriting, and also made true and correct copies of all exhibits and documentary evidence introduced or offered in the trial of said cause, and I further certify that the above and foregoing is a full, true and correct and complete statement and transcript of all the evidence, both oral and documentary offered or introduced in the trial of said cause and of the objections of parties thereto, the rulings of the court thereon and of the exceptions taken to such rulings.

Witness my hand at Pawhuska in said County and State this the 25th day of June, A. D., 1915.

FLORENE ISNARD,
Court Reporter.

116 Be it known that thereafter on said April 2nd, 1915, the same being a judicial day of the said District court, said Special Judge presiding, and after the introduction of such testimony, the said Laban Miles and John Kenny rested, and the same was argued to the court and the court being fully advised in the premises, found the issues in favor of, and rendered judgment for the said Laban Miles, to all of which findings and rulings the said John Kenny duly excepted, which said ruling of the court overruling of the demurrer of the said John Kenny to the plea of res adjudicata of the said Laban Miles; and the order sustaining the motion of Laban Miles to strike out parts of the answer, and the finding and judgment of the court upon the trial of said cause and the exceptions taken, were and are, as shown by journal entry duly made and filed in said court on April 2nd, 1915, in the words and figures following, towit:

117 STATE OF OKLAHOMA,
County of Osage, ss:

In the District Court of Osage County, Oklahoma.

No. 2372.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee #256, Deceased, on Appeal from the County Court to the District Court.

Journal Entry of Judgment.

Now on this 2nd day of April, 1915, same being a regular judicial day of the March 1915 term of said court the above entitled matter came on regularly for hearin*b* before A. R. Museller, Special Judge, pursuant to adjournment had on March 8th, 1915, the appellant John Kenney, appearing in his own proper person and by John Embry, his attorney, and appellee, Laban Miles, appearing in his own proper person and by H. P. White, his attorney and said cause coming up for hearing first on the demurrer of appellant, John Kenny, to the plea of res adjudicata of the appellee, Laban Miles, and the court having heard the argument of counsel and being fully advised in the premises finds that said demurrer to said plea of res adjudicata should be overruled, to which finding of the court said John Kenny objects and excepts, which objections and exceptions are by the court allowed.

It is therefore, ordered, adjudged and decreed by the court that said demurrer to said plea of res adjudicata be and the same hereby is by the court overruled, to which ruling of the court said John Kenny objects and excepts, which objections and exceptions are by the court allowed.

Thereafter, to wit: on the 2nd day of April, 1915, the above entitled cause came on further for hearing before A. R. Museller, Special Judge, upon a motion of appellee, Laban Miles, to strike portions of the answer of said John Kenny to the plea of res adjudicata of the said Laban Miles, the parties further appearing as hereinabove stated and the court having heard the argument of
118 counsel and being fully advised in the premises finds that said motion should be sustained to which ruling of the court said John Kenny objects and excepts, which said objections and exceptions are by the court allowed.

It is therefore, ordered, adjudged, and decreed by the court that said motion to strike all that part and parts of said answer of John Kenny to the plea of res adjudicata by said Laban Miles designated as "2", "3*a*", "3*b*", and "3*c*" be, and the same hereby is, by the court, sustained, to which ruling of the court the said John Kenny specially excepts to said ruling of the court as to that part of the answer designated as "2" and further specially excepts to the ruling of the court as to that part of the answer designated as 3*a* and specially excepts to the ruling of the court as to that part of the answer designated as

"3*b*", and further specially excepts to the ruling of the court as to that part of the answer designated as "3*c*", which objections and exceptions are by the court allowed.

Thereafter, to wit: on the 2nd day of April, 1915, the above entitled matter came on regularly for hearing before A. R. Museller, Special Judge, pursuant to adjournment had on March 8th, 1915, upon the final account of John L. Bird, Administrator, the exceptions filed thereto by appellant, John Kenny, the plea of res adjudicata filed by the appellee, Laban Miles, and the answer of John Kenny to the said plea of res adjudicata by said Laban Miles. The appellant, John Kenny further appearing in his own proper person and by John Embry, his attorney and the appelle-, Laban Miles, further appearing in his own proper person and by H. P. White, his attorney, and all parties waive trial by jury and announce ready for trial by the court. Thereupon the appellee, Laban Miles, offers his testimony, and rests, and thereupon, appellant, John Kenny, offers his testimony, and rests, and the court having heard the evidence and the argument of counsel and being fully advised in the premises finds that the final account rendered by John L. Bird, administrator of the estate of said Lah-tah-sah, deceased, is true and correct;
119 that said administrator has made no profit out of the estate and has made disbursements as stated in said account and statement of disbursements since rendition of said final account and that said disbursements should be approved. The Court further finds that the administrator is entitled to the sum of $12.00 as commission on the amount of money belonging to said estate received and accounted for by said administrator.

The court further finds from the evidence that the heirs of the estate of said Lah-tah-sah, deceased have heretofore been determined by the District Court of Osage County, Oklahoma, in the partition suit of Laban Miles, plaintiff, vs. John Kenny, defendant, No. 1896, as per judgment of court pleaded herein by said Laban Miles as a plea of res adjudicata. That said plea of res adjudicata should be sustained.

The court further finds from the evidence that the sole and only legal heirs of said Lah-tah-sah, deceased, are appelle-, Laban Miles, surviving husband and appellant, John Kenny, the only living issue of said Lah-tah-sah, deceased; that upon the death of said Lah-tah-sah, deceased, her entire estate consisting of lands, moneys and mineral interests acquired by her through the division of the lands of the Osage Indians in Oklahoma, and the segregation of moneys belonging to said tribe held by the United States, as a member of the Osage Tribe of Indians, descended in equal shares to said Laban Miles, surviving husband and said John Kenny, only living child, to wit: an undivided one-half to each; that the judgment of the County Court of Osage County, Oklahoma, rendered on the 14th day of March, 1914, appealed from, should in all things be affirmed, to all of which findings, said John Kenny objects and excepts, which objections and exceptions are by the court allowed.

It is, therefore, ordered, adjudged and decreed by the court that the plea of res adjudicata of appellee, Laban Miles, should be, and

the same hereby is, by the court, sustained and that the final
120 account of said John L. Bird, administrator of said estate be, and the same hereby is, by the court, approved and that said John L. Bird deduct from the money in his hands belonging to said estate the sum of $12.00 as compensation for services rendered by him in said estate and file a receipt therefor; that said administrator pay the accrued costs in the county court now unpaid less the cost of preparing transcript for appeal, out of the money in his hands belonging to said estate, and file receipt therefor; that appellant, John Kenny pay the costs accruing on appeal including the costs of transcript in the county court.

It is further ordered, adjudged and decreed by the court that the sole and only heirs of Lah-tah-sah, deceased, Osage Allottee, No. 256, are Laban Miles, surviving husband and John Kenny, the only living issue of said Lah-tah-sah, deceased, at the time of her death; that upon the death of said Lah-tah-sah, deceased, her entire estate descended in equal shares to said Laban Miles and to said John Kenny, to wit: an undivided one-half thereof to each and that upon the payment of costs and administration fees by said administrator as herein provided that said administrator pay the remainder now in his hands belongng to said estate, one-half to said Laban Miles and One-half to said John Kenny and take their receipt therefor, to all of which rulings, orders and judgment of the court said John Kenny objects and excepts, which objections and exceptions are by the court allowed.

A. R. MUSELLER,
Special Judge.

O. K.
H. P. WHITE,
Attorney for Laban Miles.
JOHN EMBRY,
Attorney for John Kenny.

Endorsed: Filed Apr. 2, 1915. Thos. Leahy, Court Clerk. By Eula B. —, Deputy. Rec. Journ. 7 page 461.

121 Be it known that thereafter, on said April 2nd, 1915, the said John Kenny duly made and filed in said cause and court. his motion for a new trial, which said motion, together with all the indorsements thereon, was and is in the words and figures following, to wit:

122 In the District Court of Osage County, Oklahoma, Honorable A. R. Museller, Special Judge, Presiding.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee No. 256, Deceased, on Appeal from the County Court of Osage County, Oklahoma.

Motion for New Trial.

Comes now John Kenny, heir at law of the said Lah-tah-sah, deceased, and moves the Court to vacate and set aside the findings, decree and judgment herein, and grant this Movant a new trial, for the following errors and causes which effect materially the substantial rights of the said John Kenny.

1. Error of law committed by the Court in overruling the demurrer of John Kenny to the plea of res adjudicata herein, and excepted to by John Kenny.

2. Error of law committed by the Court in sustaining the motion of the said Laban Miles in striking out Paragraph 2 of this Movant Answer herein, and excepted to by John Kenny.

3. For error of law on the part of the Court in sustaining said motion in striking out Paragraph 3-*a* of said Answer, and excepted to by John Kenny.

4. For error of law by the Court in sustaining said motion in striking out Paragraph 3-*b* of said answer, and excepted to by John Kenny.

5. And for error of law by the Court in sustaining said motion in striking out Paragraph 3-*c* of said answer, and excepted to by John Kenny.

6. For error of law committed by the court at the trial, in excluding competent, material, and relevant testimony offered
123 by the said John Kenny in his behalf, and which rulings were excepted to by said John Kenny at the time.

7. For errors of law committed by the Court at the trial in admitting incompetent, irrelevant, and immaterial testimony offered by the said Laban Miles, and objected to by this Movant, to which this Movant, John Kenny, excepted at the time.

8. For errors of law occurring at the trial and excepted to by this Movant, John Kenny, at the time.

9. For the reason that the finding, decision and decree of the court are not sustained by sufficient evidence, but are contrary to the evidence.

10. That the decree, decision and finding of the court is contrary to law.

11. For error of the court in sustaining the plea of res adjudicata set up and plead herein by the said Laban Miles, and for the refusal of the court to permit this movant to introduce testimony touching the fact whether or not the said Laban Miles was ever married to the deceased, and excepted to by John Kenny at the time.

12. For errors of law occurring at the trial in that said John

Kenny was not granted a trial de novo in this court, and was not granted a trial of the rights of heirs to the estate and property of said deceased, to which said John Kenny excepted at the time.

13. For errors of law committed at the trial by the Court in refusing to admit the testimony offered for the purpose of showing that the said Laban Miles was not married to the said Lah-tah-sah, and was not an heir of the said Lah-tah-sah, which ruling was excepted to by the movant at the time.

14. The court erred at the trial in refusing to hear the testimony for the purpose of determining the legal heirs of the
124 said deceased, and in holding that the issues in that respect was concluded by the finding and judgment set up and contained in the said writing, marked "Laban Miles' Exhibit 4", a former judgment of the District Court of said county, to which John Kenny excepted at the time.

15. The court committed errors of law at the trial in admitting evidence in support of the plea of Laban Miles setting forth the prior adjudication and determination of the district court of said County, of the heirs of said deceased.

16. The court committed errors of law at the trial in permitting Laban Miles to introduce the said Exhibit 4, and the other exhibits relating thereto, for the reason that they have never been approved by the Secretary of the Interior, and pertain to the restricted lands of the deceased Osage Allottee.

For error of law in the assessment of the amount of recovery which was excessive in that the judgment attempts to make distribution of lands and moneys of deceased belonging to her as an Osage Indian Allottee, which are restricted and not within the jurisdiction of said court.

JOHN EMBRY,
Attorney for John Kenny.

Endorsed: Filed Apr. 2, 1915. Thos. Leahy, Court Clerk. By Eula B. Foley, Deputy.

125 Be it known that thereafter, towit, on the 2nd day of April, 1915, the motion of the said John Kenny for a new trial in the above entitled cause coming on regularly to be heard before said Court the Hon. A. R. Museller, special judge, presiding, the same was duly argued by counsel, considered by the court and overruled, to which ruling John Kenny took exceptions, and for good cause shown, was given ninety (90) days within which to make and serve a case made for appeal to the Supreme Court, which said judgment and order overruling said motion for a new trial and such exceptions and the time given within which to make and serve a case made, together with all indorsements thereon, is in the words and figures following, towit:

126 STATE OF OKLAHOMA,
County of Osage, ss:

In the District Court of Osage County, Oklahoma.

No. 2372.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee # 256, Deceased, on Appeal from the County Court to the District Court.

Now on this 2nd day of April, 1915, the same being a regular judicial day of the March, 1915, term of said court the above entitled matter came on for further hearing before A. R. Museller, Special Judge, upon a motion of appellant, John Kenny for a new trial said John Kenney appearing in his own proper person and by John Embry, his attorney and appellee, Laban Miles, appearing in his own proper person and by H. P. White, his attorney and the court having heard the argument of counsel and being fully advised in the premises finds that said motion for new trial should be overruled to which finding of the court the said John Kenny objects and excepts, which objections and exceptions are by the court allowed.

It is therefore ordered, adjudged and decreed by the court that said motion of the said John Kenny for a new trial be and the same hereby is by the court overruled to which ruling of the court the said John Kenny objects and excepts, which objections and exceptions are by the court allowed.

Thereupon said John Kenny asks 90 days in which to make and serve a case made; that said Laban Miles be allowed 10 days thereafter in which to suggest amendments to said case made and that said case made be signed and settled on 5 days written notice by either party and that said John Kenny be allowed 120 days to file petition in error in the Supreme Court.

127 It is, therefore, further ordered, by the court that for good cause shown said John Kenny have 90 days in which to make and serve a case made for appeal to the Supreme Court; that said Laban Miles have 10 days thereafter in which to suggest amendments to said case made, said case made to be settled and signed on 5 days written notice by either party, and that said John Kenny have 120 days to file petition in error in the Supreme Court.

And for good cause shown it is further ordered by the court that said John Kenny have 20 days in which to file a supersedeas bond in the sum of $106.00.

A. R. MUSELLER,
Special Judge.

O. K.
H. P. WHITE,
Attorney for Laban Miles.
JOHN EMBRY,
Attorney for John Kenny.

Endorsed: Filed April 2, 1915. Thomas Leahy, County Clerk. By Eula B. Foley, Deputy.

Recorded Journal 7, page 460.

128 Be it known that thereafter, on the 16th day of April, 1915, the said John Kenny made and filed in said court, which was duly approved by the Clerk thereof, a supersedeas bond, which was and is in the words and figures following, towit:

129 In the District Court of Osage County, Oklahoma.

No. 2372.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee No. 256, Deceased, on Appeal from the County Court to the District Court.

Supersedeas Bond.

Know all men by these presents: That John Kenny, as principal and James J. Quarles and Chas. A. Foster as sureties, are held and firmly bound to Laban Miles, claimant in the above entitled cause, in the sum of One Hundred and Six ($106.00) Dollars for the payment of which well and truly to be made, we, and each of us, do hereby jointly and severally bind ourselves, our heirs and personal representatives.

Dated this 14th day of April, A. D., 1915.

The condition of the foregoing obligation is such that,

Whereas, on the second day of April, 1915, judgment was rendered in said District Court in favor of said obligee, Laban Miles, claimant in said cause, and against said John Kenny, that the said Laban Miles was an heir at law of said Lah-tah-sah, deceased, and that the entire estate of said decedent descended to said Laban Miles and John Kenny in equal parts, and that the administrator pay to them in equal parts the remainder of said estate in his hands after payment of cash and administration fees.

And, whereas, said John Kenny has taken an appeal from said judgment to the Supreme Court of Oklahoma; and his supersedeas bond has been fixed at $106.00.

Now, therefore, if the said principal obligee herein, John Kenny, shall pay to the said obligee the condemnation money and
130 costs in case the judgment or final order shall be adjudged against him, or affirmed in whole or in part, then this obligation shall be void; otherwise to remain in full force and effect.

JOHN KENNY,
Principal.
JAMES J. QUARLES,
CHAS A. FOSTER,
Sureties.

STATE OF OKLAHOMA,
Osage County, ss:

James J. Quarles and Chas. A. Foster, each of lawful age, being duly sworn says that he is one of the sureties on the foregoing Bond, that he is a freeholder and resident of Osage County, Oklahoma, and that he is worth the sum of Five hundred dollars ($500.00) in property subject to execution over and above his debts, liabilities and exemptions.

JAMES J. QUARLES.
CHAS. A. FOSTER.

Subscribed and sworn to before me this 16th day of April, 1915.

F. O. QUARLES,
[SEAL.] *Notary Public.*

My commission expires January 17, 1918.

Endorsed: Filed Apr. 19, 1915. Thos. Leahy, Court Clerk. Approved April 19, 1915. Thos. Leahy, Court Clerk.

131 The above and foregoing contains true, full, correct and complete copies of all the pleadings, certified copies, transcripts, motions, orders, demurrers, judgments and proceedings had, made and rendered in the above entitled cause, and contains all of the evidence, both oral and documentary, introduced or offered on the trial of said cause, together with all objections of parties and counsel thereto, the rulings and remarks of the court thereon, and the exceptions taken thereto; and is a full, true, correct and complete transcript and statement of all pleadings, certified copies, transcripts, motions, orders, judgments, journal entries, evidence, matters and proceedings had and done in the above entitled cause and of the final judgment of the court in said cause, and constitutes a full, true and complete case made for the Supreme Court of Oklahoma in said cause.

132 In the District Court of Osage County, State of Oklahoma.

No. 2372.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee, No. 256, Deceased, on Appeal from the County Court to the District Court.

We, the undersigned, attorneys for the Appellant, John Kenney, above named, do hereby certify that the above and foregoing is in all respects a full, true, correct and complete case made.

Witness our hands this the 25th day of June, 1915.

E. R. HASTINGS,
PAUL VAN WINKLE,
Attorneys for John Kenny, Appellant.

STATE OF OKLAHOMA,
Osage County, ss:

We, the undersigned, attorneys for the Appellee, Laban Miles, in the above entitled cause, do hereby acknowledge service of the above and foregoing, this the 26th day of June, 1915.

H. P. WHITE,
Attorney for Laban Miles.

And, we do hereby waive the suggestions of any amendments thereto and hereby consent that the same may be settled and signed at any time and place, as a true and correct case made in said cause, by the Judge who tried said cause, without further notice to us of the time and place of such signing and settlement, and we do hereby waive the issuance and service of summons from the Supreme Court of Oklahoma in said cause.

Witness our hands this the — day of June, 1915.

____ ____,
Attorney for Laban Miles.

133 Be it known that thereafter on, towit, July 6, 1915 the said John Kenny by his counsel duly served upon H. P. White, attorney for said Laban Miles, a written notice of the time and place for settling and signing said case made, which notice was duly accepted and the service thereof acknowledged by the said H. P. White, which notice and the acceptance of service thereof is in the words and figures following, towit:

134 In the District Court in and for Osage County, State of Oklahoma.

No. 2372.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee, Number 256, Deceased, on Appeal from the County Court to the District Court.

Notice of Settlement of Case Made.

To Laban Miles and H. P. White, attorney of record for said Laban Miles:

You are hereby notified that on the 12th day of July, 1915, at the hour of four o'clock in the afternoon of said day, or as soon thereafter as counsel can be heard, the undersigned attorneys for John Kenny, appellant in the above entitled cause, will, at the District Court Room in the City of Pawhuska, Osage County, Oklahoma, present the case made in the above entitled cause served on the said H. P. White, attorney, on, towit, June 26th, 1915, together with all amendments thereto suggested or which may be suggested by you, to the Honorable A. R. Museller, Special Judge who tried and ren-

dered final judgment in said cause in the District Court of the Twenty-fourth Judicial District, in and for Osage County, Oklahoma, for settlement, and said special judge will then and there be requested to settle and sign at said time and place said case made as it now is or as it may be amended by him, as a true and correct case made in said cause, and to direct that it be attested, sealed and filed by the Clerk of said Court.

JOHN EMBRY,
E. R. HASTINGS,
PAUL VAN WINKLE,
Attorneys for John Kenny.

Service of the above notice is hereby accepted this 6th day of July, 1915.

H. P. WHITE,
Attorney for Laban Miles.

135 Be it known that thereafter on said July 6, 1915, the said special Judge, A. R. Museller, presiding, the District Court of said Osage County, Oklahoma made an order fixing time for settling and signing said case made, which order with all endorsements thereon is in the words and figures following, towit:

136 In the District Court in and for Osage County, State of Oklahoma.

No. 2372.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee, Number 256, Deceased, on Appeal from the County Court to the District Court.

Order for Settlement.

Now, towit, on this July 6th, 1915, the same being a judicial day of the above entitled court, the above entitled cause came on for hearing upon the application of John Kenny, appellant, by his attorney, for the fixing of a date for the settlement and signing of a case made in said cause, the Honorable A. R. Museller, Special Judge of said Court presiding, and it being made to appear to said special judge and court, that the said John Kenny by his attorneys has served Laban Miles the Appellee in said cause and H. P. White, attorney for said Laban Miles, with a notice in writing that they will present the said case made and suggestions of amendments to said special Judge at the District Court Room in Pawhuska, said Osage County, Oklahoma, at the hour of four o'clock P. M., July 12th, 1915, or as soon thereafter as counsel can be heard for settlement and will ask the settlement and signing of a case made in said cause and for other orders;

Now, therefore, it is ordered that the said case made and sugges-

tions of amendments be presented to the said special Judge at four o'clock P. M., July 12th, 1915, at the said District Court room in Pawhuska, said County and State for settlement and that a case made in said cause be settled and signed by said special judge at said time and place or as soon thereafter as the same can be con-
137 cluded; and that all other proper orders be made for the attestation, sealing and filing of the same.

A. R. MUSELLER,
Special Judge.

In the District Court of the Twenty-fourth Judicial District.

STATE OF OKLAHOMA,
Osage County, ss:

I, Thos. Leahy, Clerk of the District Court of the Twenty-fourth Judicial District of the State of Oklahoma, do hereby certify that the foregoing is a true and correct copy of the original order on file and of record in my office at Pawhuska, Oklahoma.

In Testimony whereof I have hereunto set my hand and affixed the seal of said Court at Pawhuska, Okla., in said District, this the 6 day of July, 1915.

[SEAL.] THOS. LEAHY, *Clerk.*

Endorsed: In the District Court in and for Osage County, State of Oklahoma. In the matter of the estate of Lah-tah-sah, Osage Allottee, No. 256, deceased, on appeal from the District Court to the County Court. Order fixing date for settlement of case made. District Court, State of Oklahoma, County of Osage. Pawhuska, Okla. Filed July 6 1915. —— ——, Court Clerk, by —— ——, Deputy.

138 Be it known that thereafter on July 12, 1915, the said Laban Miles filed in said District Court of Osage County, Oklahoma, his motion to strike from the files the appeal bond and notice of appeal filed in said Osage County Court, Oklahoma, which motion with all endorsements thereon is in the words and figures following, towit:

139 STATE OF OKLAHOMA,
County of Osage, ss:

In the District Court of Osage County, Oklahoma.

No. 2372.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee, No. 256, on Appeal from the County Court to the District Court.

Motion.

Comes now Laban Miles, a party of interest in the above entitled matter and moves the court to strike from the files of the above entitled and numbered action, the pretended notice of appeal from the County Court to the District Court for the reason and upon the ground that no copy of said pretended notice of appeal was ever served on the Superintendent of the Osage Agency, at the time of filing as required by an Act of Congress approved April 18, 1912 (Public No. 125), by reason whereof said pretended notice of appeal is an incumbrance of the record not entitled to be filed, and should be stricken therefrom.

(2) Said Laban Miles further moves the court to strike from the files and record of the above entitled matter and number the pretended appeal bond on appeal from the County Court to the District Court for the reason and upon the ground that no copy thereof has ever been served on the Superintendent of the Osage Agency, as required by an Act of Congress approved April 18, 1912, (Public No. 125), for which reason said pretended appeal bond is an incumbrance of the record and not entitled to be filed as a part of the record in said matter.

H. P. WHITE,
Attorney for Laban Miles.

140 Be it known that thereafter on said July 12, 1915, the said motion of the said Laban Miles to strike said appeal bond and notice of appeal coming on to be heard in said District Court, the said special Judge, A. R. Muselle, presiding, and after argument of counsel and consideration by the court, the court overrules said motion; to which ruling said Laban Miles duly excepts and exceptions are allowed, which said rulings and exceptions together with all endorsements thereon are in the words and figures following, towit:

141 In the District Court in and for Osage County, State of Oklahoma.

No. 2372.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee #256, on Appeal from the County Court to the District Court.

Journal Entry Overruling Motion to Strike Notice of Appeal and Appeal Bond from the Record.

Now on this 12th day of July 1915, the same being a regular judicial day of the June 1915 term of said Court, the above entitled matter came on for hearing before A. R. Museller, special judge, upon a motion of Laban Miles to strike from the record notice of appeal and appeal bond filed in the County Court, and copies thereof included in the transcript of the record filed in this court, Laban Miles, a party of interest, appearing by H. P. White, his attorney, and John Kenny, a party of interest, appearing by John Embry and E. R. Hastings, his attorneys, and the court having examined said motion and having heard the argument of counsel, and being fully advised in the premises finds that said motion should be overruled.

It is therefore ordered by the court that said motion, and the same hereby is by the court, overruled to all of which said Laban Miles objects and excepts which objections and exceptions by the court are allowed.

A. R. MUSELLER,
Special Judge.

Endorsed: Filed in open Court July 12, 1915. Thos. Leahy, Court Clerk.

142 Be it know that on July 6, 1915, the appellee, Laban Miles duly served upon counsel for John Kenny and on John Kenny the suggestion of amendments to said case made as follows, towit:

143 In the District Court in and for Osage County, State of Oklahoma.

No. 2372.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee #256, on Appeal from the County Court to the District Court.

Suggestions of Amendments to Case-made.

Comes now Laban Miles by H. P. White, his attorney, and suggests that the case made prepared and served by John Kenny on

H. P. White, attorney for Laban Miles, June 26, 1915, be amended as hereinafter stated, and moves the court that said case-made be amended as follows, towit:

(1) Said Laban Miles moves the court to strike from said case-made pages 34, 35, 36 and 37, same being a copy of pretended notice of appeal for the reason and upon the ground that the original pretended notice of appeal and no copy thereof was ever served on the Superintendent of the Osage Agency at the time of filing as required by an Act of Congress approved April 18, 1912, (Public No. 125), for which reason said pretended notice of appeal is not a part of the record and not entitled to be included in said case-made.

(2) Said Laban Miles moves the court to strike from said case-made the pretended appeal bond as shown at page 32 of said case-made for the reason and upon the ground that the original and no copy thereof have ever been served on the Superintendent of the Osage Agency for which reason said pretended appeal bond
144 is an incumbrance of the record, not a part of the record and not entitled to be included in said case-made.

H. P. WHITE,
Attorney for Laban Miles.

Service of the within and foregoing suggestions of amendments, and the receipt of a copy thereof is hereby acknowledged this 6th day of July, 1915.

E. R. HASTINGS,
JOHN EMBRY,
Attorneys for John Kenny.

145 It is stipulated by the parties to the above entitled action that further time and notice of the settlement of the case-made herein be and the same is hereby waived.

E. R. HASTINGS,
JOHN EMBRY,
Attorneys for John Kenny.
H. P. WHITE,
Attorney for Laban Miles.

146 In the District Court of Osage County.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee #256, Deceased, on Appeal from the County Court to the District Court.

Order Disallowing Amendments to Case-made as Suggested.

Now on this 12th day of July, 1915, same being a regular judicial day of the June 1915 term of said court, the above entitled matter came on for hearing before A. R. Museller, Special Judge, who tried said case upon suggestion of amendments to case-made on behalf of Laban Miles. Said Laban Miles appearing by H. P.

White, his attorney, and John Kenny appearing by E. R. Hastings and John Embry, his attorneys, and the court having considered said suggested amendments to said case-made, and having heard the argument of counsel and being fully advised in the premises overrules and disallows said suggested amendments, designated and numbered one and two and set out at page 125 of the foregoing case-made, to all of which said Laban Miles objects and excepts, which objections and exceptions are by the court allowed.

A. R. MUSELLER,
Special Judge.

Endorsed: Filed in open court July 12, 1915. Thos. Leahy, District Clerk.

147 In the District Court of Osage County, Oklahoma.

No. 2372.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee #256, Deceased, on Appeal from the County Court to the District Court.

Judge's Certificate.

I, the undersigned Judge of the Twenty-fourth Judicial District in and for Osage County, Oklahoma, that is, the special Judge who, in said court, tried and rendered judgment in the action entitled hereinbefore, "In the matter of the estate of Lah-tah-sah, Osage Allottee No. 256, deceased, on appeal from the County Court to the District Court," hereby certify that the foregoing was presented to me as the case-made in the action above entitled, including the service, the notice and order for the time and place of settling and signing the same, and the motion of the said Laban Miles to strike as therein recited, and the order of the court thereon, and as the suggestion of amendments to said case-made by the said Laban Miles, and the order disallowing the same, and as the stipulation of parties waiving further time or notice of the settling of said case-made, in the action above entitled, at the District Court room in the City of Pawhuska, Osage County, Oklahoma, on the 12th day of July 1915 at the hour of four o'clock P. M., of said date, in pursuance of the notice and order aforesaid fixing said time and place of settling and signing of said case-made, and of the agreement of parties; and now at said time and place the said appellant, John Kenny, appears by E. R. Hastings and John Embry, his attorneys, and the said appellee, Laban Miles appears by his attorney, H. P. White, and the said appellee, Laban Miles presents said suggestions of amendment to said case-made at page 125 hereof, which said suggestions of amendments have been duly served in time, and said suggestions of amendments are duly considered by the court and disallowed. And I settle and sign the foregoing as a true
148 and correct case-made, and direct that it be attested and filed by the Clerk of said Court.

Witness my hand at Pawhuska in Osage County, Oklahoma, this 12th day of July, 1915.

A. R. MUSELLER,
Special Judge District Court.

[SEAL.]

Attest:
THOS. LEAHY,
Court Clerk.

District Court State of Oklahoma, County of Osage, Pawhuska, Okla. Filed Jul- 12, 1915. Thos. Leahy, Court Clerk.

149 STATE OF OKLAHOMA,
County of Osage, ss:

In the District Court of Osage County, Oklahoma.

No. 2372.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee, #256, Deceased, on Appeal from the County Court to the District Court.

Transcript.

EXHIBIT B.

150 In the County Court of Osage County, Oklahoma.

No. 389.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee, No. 256, Deceased.

Transcript on Appeal to the District Court.

151 *Petition for Letters of Administration.*

THE STATE OF OKLAHOMA,
Osage County, ss:

In the County Court.

Roll No. —.

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee, No. 256, Deceased.

Comes now Laban Miles, and shows to the Court that Lah-tah-sah departed this life at Pawhuska, in the County of Osage and State of Oklahoma, on or about the 19th day of August, A. D. 1908.

The said decedent was at the time of his death a resident of Pawhuska, in the County of Osage and State of Oklahoma.

The decedent left estate in the County of Osage and State of Oklahoma. That due search and inquiry has been made to ascertain if decedent left a will but none has been found, and according to the best information and belief of petitioner, said decedent died intestate.

The general character and probable value of the estate left by decedent is as follows: Lands allotted to her as a member of the Osage Tribe of Indians, in Osage County, Oklahoma, amounting to about 660 acres of the approximate yearly rental of $500.00, and tribal trust funds belonging to her as a member of such tribe, and to her credit in the Treasury of the United States, together with oil, gas and other mineral annuities of the approximate yearly income of $600.00.

That the names, ages and residences of the heirs at law of the decedent so far as known to your petitioner, are as follows:
152 Laban Miles, Husband, age 50 years, residence Pawhuska, Oklahoma, John Kenney, Son, age 26 years, residence Fairfax, Oklahoma.

That your petitioner is husband of said decedent and is advised and believes that he is entitled to administer upon said estate. He therefore recommends and requests that John Bird be appointed by the Court as such administrator.

That John Bird for whom letters of administration are herein prayed is a resident of Osage County, State of Oklahoma, with post-office address at Pawhuska, Oklahoma, in said County.

Wherefore, petitioner prays that letters of administration issue to said John Bird.

LABAN MILES, *Petitioner.*

GRINSTEAD, MASON & SCOTT,
Att'ys for Petitioner.

Endorsed on the Back: No. 389. In the Matter of the -state of Lah-tah-sah, Deceased. Petition for letters of administration. Filed in the County Court, Osage County, Okla., this 8th day of July, 1912. J. F. Jones, Clerk County Court.

PAWHUSKA, OKLAHOMA, July 8, 1912.

I hereby acknowledge service of the within petition and the receipt of a true copy thereof, the date first above written.

W. M. PETERSON,
Supervisor in Charge, Osage Agency.

153 *Notice of Application for Appointment of Administrator.*

In the County Court, County of Osage, State of Oklahoma.

In the Estate of LAH-TAH-SAH, Osage Allottee No. 256, Deceased.

The State of Oklahoma to the heirs next of kin, Superintendent of the Osage Agency, and Creditors of the said Lah-tah-sah, Deceased:

You are hereby notified that Laban Miles has applied for letters of administrator of said estate to be granted to John Bird, and that said petition will be heard at the Court room of said Court in the city of Pawhuska, in said County and State, on Thursday, the 8th day of August, 1912, at 9:00 o'clock A. M., at which time you may appear and show cause, if any you have, why said petition should not be granted.

Witness my hand and the seal of said Court hereunto affixed this 9th day of July, 1912.

[SEAL.]

J. F. JONES,
Clerk County Court.

STATE OF OKLAHOMA,
Osage County, ss:

I, the undersigned, do solmenly swear that on the 9th day of July, 1912, I posted true copies of the within notice in three public places in Osage County, as follows, one at the Court House, in the City of Pawhuska, one at old Agency Bldg., Pawhuska, and one at City Hall, Pawhuska.

C. S. COOKSEY.

Subscribed and sworn to before me this 9th day of July, A. D. 1912.

[SEAL.]

C. T. BENNETT,
County Judge.

154 STATE OF OKLAHOMA,
Osage County, ss:

I, the undersigned, do solemnly swear that on the 9th day of July, 1912, I deposited in the postoffice copies of the within notice, postage prepaid, and addressed to John Kinney, at Fairfax, Okla., at their several places of residence, and that said persons are all of the heirs of the within named decedent.

PAUL B. MASON.

Subscribed and sworn to before me, this 9th day of July, 1912.

[SEAL.]

J. F. JONES,
Clerk County Court.

Fees 80¢.

Endorsed on back: No. 389. In the matter of the estate of Lah-tah-sah, Deceased. Notice of application for appointment of administrator. Filed in County Court, Osage Co., Okla., this 9th day of July, 1912. Andrew Joyce, Deputy Clerk County Court.

155 In the County Court of Osage County, State of Oklahoma.

Order for Hearing.

STATE OF OKLAHOMA,
Osage County:

In the Matter of the Estate of LAH-TAH-SAH, Osage Allottee, No. 256, Deceased.

Petition for Letters of Administration.

Now, on this 9th day of July, 1912, Laban Miles, having filed in this Court his petition alleging that Lah-tah-sah died intestate on or about the 19th day of August, 1908, leaving property within the jurisdiction of this Court, and praying for the appointment of John Bird as Administrator of said estate.

It is ordered that said petition be and hereby is set for hearing on the 8th day of August, 1912, at the hour of 9 o'clock A. M., and that notice thereof be given by posting notices of such hearing at three public places in said Osage County, Oklahoma, one of which shall be posted up at the County Court house door of this Court, in the City of Pawhuska, Oklahoma, and two in two other public places, and by mailing a notice, with postage prepaid to each of the heirs at law of said decedent as required by law.

[SEAL.] C. T. BENNETT,
County Judge.

Endorsed on back: No. 389. In the matter of the state of Lah-tah-sah, Deceased. Order for hearing petition for letters of administration. Filed July 9, 1912. J. F. Jones, Clerk County Court. Recorded in Administrator's Record, Book 1, page 420.

156 *Order Appointing Administrator.*

THE STATE OF OKLAHOMA,
Osage County, ss:

In the County Court.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee, No. 256, Deceased.

Now, on this 17th day of August, 1912, there coming on for hearing the petition of Laban Miles for the appointment of John Bird, as

administrator of the estate of Lah-tah-sah, Deceased, and petitioner appearing "A" in person and by Grinstead, Mason & Scott, his attorneys, and it being first proven that notice of this hearing has been given by posting of notice for 10 consecutive days in the three public places in Osage County, Oklahoma, one of which was at the County Court house door in the city of Pawhuska, and the last on the 9th day of July, and by mailing copies of said notice on the —— day of —— postage prepaid, addressed to the heirs at law of said decedent, resident of this State, so far as known to petitioner, and the Court having heard the evidence offered in support of said petition "B" * * * and being fully advised in the premises.

It is ordered, That John Bird be and hereby is appointed administrator of the estate of Lah-tah-sah, Deceased, and that letters of Administration issue to said John Bird upon his taking and subscribing the oath required by law, and executing a bond to the State of Oklahoma, in the sum of Fifteen Hundred & No/100 Dollars, with sureties approved by the Judge of said Court as required by law.

[SEAL.] C. T. BENNETT,
County Judge.

Endorsed on back: No. 389. In the Matter of the Estate of Lah-tah-sah, Deceased. Order appointing administrator. Filed Sept. 9" 1912. J. F. Jones, Clerk County Court. Recorded in Administrator's Record Book 1, page 429.

157 *Letters of Administration.*

STATE OF OKLAHOMA,
Osage County, ss:

In the County Court.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee, No. 256, Deceased.

John Bird is hereby appointed Administrator of the estate of Lah-tah-sah, Deceased.

Witness: The hand of C. T. Bennett, Judge of the County Court of Osage County, State of Oklahoma, with the seal thereof affixed the 20th day of November, 1912.

[SEAL.] C. T. BENNETT,
County Judge.

STATE OF OKLAHOMA,
Osage County, ss:

I, John Bird, do solemnly swear that I will perform according to law, the duties of Administrator of the estate of Lah-tah-sah, Deceased, so help me God.

JOHN BIRD.

Subscribed and sworn to before me this 14th day of November, 1912.

[SEAL.] S. S. GOEHRING,
Notary Public.

My commission expires March 9, 1916.

Endorsed on back: No. 389. In the Matter of the Estate of Lah-tah-sah, Deceased. Letters of Administration. Filed November 29, 1912. Andrew Joyce, Deputy Clerk County Court. Recorded in Administrator's Record Book 1, page 420.

158 In the County Court of Osage County, Oklahoma, Sitting at Pawhuska.

In the Matter of the ESTATE OF LAH-TAH-SAH, Deceased, Osage Allottee, No. 256.

Notice to Creditors.

All persons having claims against Lah-tah-sah, Osage Allottee, No. 256, deceased, are required to present the same with necessary vouchers to the undersigned Administrator, at his office in the Citizens National Bank of Pawhuska, Oklahoma, within four months of the date hereof, or the same will be forever barred.

Dated Pawhuska, Oklahoma, December 14, 1912.

JOHN L. BIRD,
Administrator.

Endorsed: Received this writ on the 16th day of December, 1912, and executed the same by posting in three public places in Pawhuska, one at Court House door, one at City Hall, one at old Agency Bldg., (within named defendants) this 16 day of Dec. 1912. H. M. Freas, Sheriff. C. S. Cooksey, Deputy. Fee 80c.

Endorsed: No. 389, Estate of Lah-tah-sah, Deceased. Notice of hearing and Proof of Posting. Filed in County Court, Osage Co., Okla., this 16th day of December, 1912. Andrew Joyce, Deputy Clerk County Court.

159 In the County Court.

ESTATE OF LAH-TAH-SAH, Deceased.

We, the undersigned, W. E. Savage, J. W. Soderstrom and John A. Gardner, of the above estate, make and return the following true and correct inventory of all the Real Estate and all the goods, chattels, rights, credits and estate of Lah-tah-sah, Allottee 256, deceased, except the homestead, which have come to my possession or knowledge.

Real Estate.

N.W.¼ Sec. 26, 24, 4, Homestead, App. Value	$2,400.00
East ½ of Section 30, Township 28, Range 9, containing 320 acres, App. Value	960.00
Lot 3, E.½ of S.W.¼, of N.W.¼, S.E.¼ of N.W.¼ of Sec. 4, Township 20, Range 10, containing 100.12 acres	300.00
N.½ of S.E.¼ of Section 4, Township 20, Range 10, containing 80 acres, Appraised value	240.50
All North and East of the Indian Meridian in Osage County, Oklahoma	1,500.00
Total	$2,400.00

Personal Property.

Cash on hand	$ 210.00

160 Dated this 15th day of January, 1914.

JOHN L. BIRD,
Administrator.

Oath of Executor or Administrator.

STATE OF OKLAHOMA,
Osage County, ss:

John L. Bird, being first duly sworn, says. That he is administrator of the estate of Lah-tah-sah, deceased:

That the above inventory by him made contains a true statement of all the estate of said decedent, except the homestead, that has come to his knowledge and possession and particularly all of the moneys belonging to said decedent, and of all just claims of said decedent against Lah-tah-sah.

JOHN L. BIRD,
Administrator.

Subscribed and Sworn to before me this 24th day of January, A. D., 1914.

[SEAL.]

C. E. LAKE,
Notary Public.

My Commission expires Mar. 7, 1915.

In the County Court in and for Osage County, State of Oklahoma.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee, 256, Deceased.

Order Appointing Appraisers.

Now, on this 7th day of January, 1914, it is hereby ordered that W. E. Savage, J. W. Soderstrom, John A. Gardner, of Osage County,

State of Oklahoma, be and are hereby appointed appraisers of the estate of Lah-tah-sah, Allottee 256, deceased, within the County of Osage, in said State; and are hereby directed to view and appraise said estate, and make return of said appraisement as provided by law.

[SEAL.] CHARLES R. GRAY,
Special County Judge.

161 STATE OF OKLAHOMA,
Osage County, ss:

I, Belva L. Moore, Clerk of the County Court in and for the county and State aforesaid do hereby certify that the above and foregoing to be a true copy of the original thereof, as the same appears on record in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, this — day of January, 1914.

[SEAL.] BELVA L. MOORE,
Clerk of the County Court.

Oath of Appraisers.

STATE OF OKLAHOMA,
Osage County, ss:

I, do solemnly swear that I will truly, honestly, and impartially appraise the property exhibited to me as belonging to the estate of Lah-tah-sah, R. No. 256, deceased, according to the best of my knowledge and ability and that I am disinterest- in said estate, So help me God.

J. W. SODERSTROM,
W. E. SAVAGE,
JOHN A. GARDNER,
Appraisers.

Subscribed and sworn to before me this 15th day of Jany. A. D., 1914.

[SEAL.] BELVA L. MOORE,
Clerk C. Court.

Certificate of Appraisers.

We, the undersigned, Appraisers, do hereby certify, that pursuant to the annexed warrant to us directed, we have appraised all the property described and mentioned in the above inventory, which has been to us exhibited, setting down opposite each item in said inventory, in figures, the value in money, as by us determined.

162 Witness our hands, this 15th day of January, A. D., 1914.

J. W. SODERSTROM,
W. E. SAVAGE,
JOHN A. GARDNER,
Appraisers.

Bill of Appraisers.

ESTATE OF LAH-TAH-SAH, Deceased.

To —— ——, Appraisers, Dr.

To compensation for services appraising said Estate, as follows:
One day, at $2.00 per day each $6.00
Necessary disbursements, as follows: Board 4.50

$10.50

STATE OF OKLAHOMA,
Osage County, ss:

J. W. Soderstrom, W. E. Savage, and John A. Gardner, the appraisers within named, being duly sworn, each for himself says, that the foregoing bill of items is correct and just, and that the services have been rendered and expenses incurred as therein set forth.

J. W. SODERSTROM, 3.50
W. E. SAVAGE, 3.50
JOHN A. GARDNER, 3.50
Appraisers.

Subscribed and sworn to before me this 15th day of Jan'y A. D. 1914.

[SEAL.] BELVA L. MOORE,
Clerk County Court.

Endorsed on back: No. 389. General Inventory and Appraisement. In the County Court. County of Osage. In the matter of the estate of Lah-tah-sah, deceased. Filed this 28th day of Jan'y, 1914. Belva L. Moore, Clerk County Court. Service of within paper and receipt of copy thereof, acknowledged this — day of Jan. 1914. James A. Carroll, Supt. Osage Agency, Per F. A. B.

163 *Annual or Final Account of Administrator or Executor.*

STATE OF OKLAHOMA,
Osage County, ss:

In the County Court of said County.

To the Judge of said Court:

To the understand, as the administrator of the estate of Lah-tah-sah, Osage Allottee, No. 256, deceased, respectfully submit the following as a full and correct account and report of his administration as such Admr., from November 20, 1912, to the 23rd day of January, 1914, which account exhibits not only the debts which

have been paid, but also contains a statement of all the debts which have been presented and allowed during the period embraced in this account.

I charge myself with the following, to-wit:

Date Month	Day	Year	Items of Receipts	Total Amount
Dec.	11,	1912	Lease	$240.00
Total amount of moneys received or col.....				$240.00

Contra.

I ask myself to be credited with the following payment to creditors of deceased, as per voucher herewith submitted.

Items Paid Out

Nov. 20, 1912. Premium on surety bond.....$15.00
Nov. 20, 1912. " " " " $15.00

Total amount received.....$240.00
" " paid out..... 30.00

Balance due.....$210.00

(Signed.) JOHN L. BIRD.

STATE OF OKLAHOMA,
Osage County, ss:

John L. Bird, being duly sworn, on oath says, that he has read the foregoing account and report of his administration, as the Admr. of the estate of Lah-tah-sah, Osage Allottee 256, deceased, 164 and knows the contents thereof, and that the same are true and correct.

JOHN L. BIRD.

Subscribed and sworn to before me, this 24th day of Jan'y, 1914.
[SEAL.] D. F. LAKE,
Notary Public.

My commission expires March 7, 1915.

* * * * * * *

Your administrator (executor) further reports that the debts and claims against said estate have all been paid, leaving the above balance to be distributed between the parties lawfully entitled thereto. Your administrator therefore petitions the Court to determine and find the heirs of said estate, which he is informed and believes to be the following named persoa *dne* entitled to said estate as follows:

Laban Miles, surviving husband, one-half.
John Kenney, son, one-half.
and moves the Court that said heirs be determined and * * *

be allowed to make distribution of said estate, and take receipts therefor, and present the same to the Court and be discharged; all of which is respectfully submitted.

JOHN L. BIRD.

Subscribed and sworn to before me this 24th day of January, A. D. 1914.

[SEAL.]

C. F. LAKE,
Notary Public.

My commission expires Mar. 7, 1915.

Statement of Claims Presented and Allowed.

Name of Creditor:	Nature of Claim:	Amount, Etc:
—— ——	None.	——

Total amount of claims allowed.....None

Very respectfully submitted, this 24- day of Jan. 1914.

JOHN L. BIRD,
Administrator.

Endorsed on back: No. 389. Annual or Final Account of Administrator or Executor. In County Court of Osage County, Oklahoma. In the matter of the estate of Lah-tah-sah, deceased. Final account of John L. Bird, Admr. Filed Jan'y 28, 1914. Belva L. Moore, Clerk. Service of within account and receipt of copy thereof acknowledged this 15th day of Jan., 1914. James A. Carroll, Supt. Osage Agency. Per F. A. B.

165 In the County Court of Osage County, Oklahoma.

In the Matter of the ESTATE of LAH-TAH-SAH, Deceased.

Comes now John Kinney, son of the decedent, and alleges that he is the sole and only heir at law of said Lah-tah-sah; that he is the son of such decedent; that Laban Miles is not an heir of said decedent, and this said John Kinney objects and excepts to the final report of the administrator herein in that said report suggests that Laban Miles is an heir of such decedent, when in truth and in fact he is not.

Wherefore, the said John Kinney prays that this court inquire, ascertain and determine that the said Laban Miles is not an heir and has no interest in said estate; and that said John Kinney is the sole and only heir and that the whole of said estate be distributed to him and that said report be amended accordingly.

JOHN KINNEY,
By JOHN EMBRY,
His Attorney.

Endorsed: Filed Feb. 28, 1914. Belva L. Moore, Clerk County Court.

Service accepted this 28th day of Feb., 1914.

JAMES A. CARROLL,
Supt. Osage Agency.
By F. A. BAKER.

166 STATE OF OKLAHOMA,
Osage County, ss:

In County Court.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee, No. 256, on Hearing of Final Account of Administrator.

Plea of Res Adjudicata.

Comes now Laban Miles and alleges and states that on the 25th day of April, 1913, the District Court of Osage County, Oklahoma rendered a judgment in the case of Laban Miles, plaintiff, versus John Kenny, defendant, in case No. 1896 in said Court, by which judgment the heirs of the estate of Lah-tah-sah, Osage Allottee No. 256, deceased, were ascertained and determined. A copy of said judgment is hereto attached, marked "Exhibit A" and made part hereof; that in said judgment the validity of the marriage of said Laban Miles and said Lah-tah-sah, deceased, was adjudicated; that the time during which an appeal might have been taken from said judgment of the District Court has long since expired; that no appeal from said judgment has been taken; that said John Kenny appeared in person and by Hargis & Conwall, his attorneys, at the trial in the above entitled cause wherein said judgment was rendered and participated in the trial thereof, which said trial extended over a period of five days and many witnesses were called by each of the respective parties, and much evidence offered and submitted by the respective parties upon which said judgment was based and rendered. That said Laban Miles and John Kenny are the only parties claiming any interest in said estate. That the subject-matter involved in the District Court judgment was the same as that herein involved as relating to the validity of marriage and determination of ownership; that on Sept. 12, 1908, M. L. Garrett was appointed Administrator of the estate of said Lah-tah-sah, de-
167 ceased, and fully administered upon the estate, paid all debts and was discharged as such administrator on April 5, 1910.

By reason whereof said Laban Miles alleged that the matter of the determination of the legal heirs of said Lah-tah-sah, deceased, has been fully adjudicated and all matters and claims relating thereto have become and are res adjudicata, and said Laban Miles pleads the same as a bar to the readjudication thereof by this Court and alleges that this court has no jurisdiction thereof.

WHITE & WIDDOWS,
Att'ys for Laban Miles.

168 (EXHIBIT "A.")

In the District Court in and for Osage County, Oklahoma.

No. 1896.

LABAN MILES, Plaintiff,

vs.

JOHN KENNY, Defendant.

Journal Entry.

On the 25th day of April, 1913, same being a regular judicial day of the March 1913 term of said Court, the above entitled cause came on for hearing in its regular order, pursuant to agreement of the parties, before R. B. Boone, Special Judge agreed upon by the parties. The plaintiff appearing in his own proper person and by White & Widdows, his attorneys, and the defendant appearing in his own proper person and by Hargis & Conwell, his attorneys, and all parties waiving trial by jury and announced ready for trial by the Court. And thereupon the plaintiff began introduction of his testimony and said cause was on trial in said court before said Special Judge, all parties being present in their own proper persons and by their attorneys, as hereinabove set forth on the 25th, 26th day of April, 1913, and on the 26th day of April the trial was adjourned to the 29th day of April, 1913, at noon, at which time said trial was resumed before said Special Judge, all parties being present in their own proper persons and by their attorneys, and continued on trial from noon of April 29th to May 2nd inclusive, during which said time the plaintiff introduced his testimony and rested and the defendant introduced his testimony and rested, and thereupon the plaintiff offered his testimony in rebuttal and rested. And the Court after examination of the pleadings and hearing the arguments of Counsel in behalf of the respective parties, took the case under advisement pursuant to consent and agreement of counsel of the respective parties and stipulation of counsel for both parties filed in said cause; and

169 Now on this 24th day of May, 1913, after due consideration of all the evidence and arguments of counsel and being fully advised in the premises, the court finds the following facts:

That in September, 1907, the Plaintiff, Laban Miles, after having been divorced from his former wife, Wah-shah-she-me-tsa-he, according to Osage Indian custom, entered into an agreement with Lah-tah-sah whereby he and Lah-tah-sah agreed to become man and wife. That both were full-blooded members of the Osage Indian Tribe and unmarried at the timei. That they thereupon accumed the marriage relation and continued to sustain that relation up to the time of Lah-tah-sah's death on August 19th, 1908, a period of eleven months. That the morning after they assumed such relationship,

the defendant, John Kenny, the son of Lah-tah-sah, by a former husband, received a horse given away by Hlu-ah-wah-tah, the brother-in-law of plaintiff, Laban Miles, in honor of the marriage of Laban Miles and Lah-tah-sah, in accordance with Osage Indian custom, which horse defendant sold, appropriating the money to his own use. That on said morning other presents were given in accordance with the custom of Osage Indians at the marriage of Indians of the age of Laban Miles and Lah-tah-sah, and who had been theretofore married. That a feast was given in honor of said marriage on the morning after Laban Miles brought Lah-tah-sah to his home, but neither Laban Miles nor Lah-tah-sah, were at said feast. They Laban Miles and Lah-tah-sah went to the Osage Indian Agent and had themselves enrolled as man and wife, and a trading card was issued to Laban Miles on his own and Lah-tah-sah's quarterly annuities and payments. That Laban Miles and Lah-tah-sah were recognized by the Indians with whom they associated as man and wife until Lah-tah-sah's death. They were also so recognized during this time by the Osage Indian Agency and the Interior Department.

That after assuming said relationship in September, 1907,
170 they signed various papers to borrow money as man and wife, and held themselves out as such and were so recognized by those who dealt with them in a business way.

Conclusions of Law.

That Plaintiff, Laban Miles, and Lah-tah-sah, Osage Allottee No. 256, were husband and wife at the time of the death of said Lah-tah-sah; that plaintiff, Laban Miles, is the surviving husband of said Lah-tah-sah, and as such is the owner of an undivided one-half interest in and to the lands described in plaintiff's petition.

The court further finds that Lah-tah-sah, Osage Allottee No. 256, died intestate on or about the 19th day of August, 1908, leaving an estate consisting in part of the lands described in plaintiff's petition.

The Court further finds that the plaintiff, Laban Miles, and defendant, John Kenny, above named are the only heirs at law of said Lah-tah-sah, deceased, and as such plaintiff Laban Miles owns an undivided one-half interest, and the defendant John Kenny owns an undivided one-half interest in and to the lands allotted and deeded to said Lah-tah-sah, described in plaintiff's petition, to wit:

N.W.¼ of Section 36, Township 24, Range 4, N.E.¼ of Section 30, Township 28, Range 9, S.E.¼ of Section 30, Township 28, Range 9; Lot 3, E.½ of S.W.¼ of N.W.¼, S.E.¼ of N.W.¼, N.½ of S.E.¼ of Section 4, Township 20, Range 10, all north and east of the Indian Base and Meridian in Osage County, Oklahoma.

The court further finds that no part of the lands described was ever used, occupied or claimed by said Lah-tah-sah, deceased, or any of the parties to this action as a homestead, and that no part of same was the homestead of said Lah-tah-sah, or any of the parties to this action. The court further finds that the parties hereto have been unable to agree upon a partition or division of said lands.

171 It is therefore ordered, adjudged and decreed by the Court that the plaintiff, Laban Miles, and the defendant, John Kenny, are the owners in common of the lands described, and their respective interests and ownership herein is as follows:

Laban Miles, Plaintiff, Osage Allottee No. 507, an undivided one-half; John Kenny, Defendant, Osage Allottee No. 2857, an undivided one-half; and that the shares of the aforesaid parties and their respective interests in the lands above described as above set forth, be and the same are hereby confirmed. It is further ordered, adjudged and decreed by the Court that partition of said lands be made accordingly; that W. T. Mosier, J. W. Soderstrom and W. E. Savage are hereby appointed commissioners to make partition of said property among the parties according to their respective interests as herein fixed and determined, if such partition can be made without manifest injury. But if such partition cannot be made, the commissioners herein named shall make a valuation and appraisement of the property herein described and make a report of their proceedings to the Court.

R. B. BOONE,
Special Judge.

Endorsed: Filed this the 28th day of Feb. 1914. Belva L. Moore, Clerk of the County Court.

Service of within paper and receipt of a true copy thereof is hereby acknowledged this 28th day of Feb. 1914.

W. P. HAYGOOD,
Ass't Supt. Osage Indian School.

172 In the County Court of Osage County, Oklahoma.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee, #256, Deceased.

Demurrer of John Kenny.

Comes now John Kenny and demurs to the plea of res adjudicata and hearing on final account, filed by Laban Miles, for the reasons following:

1. The District Court of Osage County, Oklahoma, rendering the findings and judgment therein pleaded was without jurisdiction to render a final binding judgment therein.

2. The former administration pleaded was invalid for the Court had no jurisdiction of the persons or subject matter, and said Laban Miles is estopped from pleading same.

3. Said plea does not state facts entitling said Laban Miles to any right or relief—all as appear from said plea.

EMBRY & HASTINGS,
Att'ys for John Kinny.

Endorsed: Filed Feb. 28, 1914, Belva L. Moore, Clerk County Court.

Service acknowledged this 28th day of Feb. 1914.

JAMES A. CARROLL,
Supt. Osage Agency.
By F. A. BAKER.

173 STATE OF OKLAHOMA,
Osage County, ss:

In the County Court.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee # 256, Deceased.

Journal Entry.

Now on this 28th day of February, 1914, the above entitled matter came on for hearing and settlement of final account of administrator and determination of heirs, pursuant to order of Court made and entered on the 28th day of January, 1914, pursuant to due and legal notice. Claimant, John Kenny, appearing by John Embry, his attorney, filed his objections to the final account of the administrator and claiming to be the sole heir of Lah-tah-sah, deceased, and that the whole of said estate be distributed to him, and asked that said report be amended accordingly. Thereupon the claimant, Laban Miles, appeared by White and Widdows, his attorneys, and filed a plea of res adjudicata as to the determination of heirs, with copy of judgment rendered in the District Court of Osage County, Oklahoma, in cause No. 1896, wherein Laban Miles was plaintiff and said John Kenny defendant. Thereupon said John Kenny by his attorney, John Embry, filed a demurrer to said plea of res adjudicata. And the Court having heard the argument of counsel and being fully advised in the premises finds that said demurrer should be overruled.

It is therefore ordered, adjudged and decreed that said demurrer be and the same hereby is by the Court overruled. To which ruling of the Court the said John Kenny objects and excepts, which objections and exceptions are by the Court allowed, and said John Kenny is given till and on March 12, 1914, to answer said plea.

It is further ordered by the Court that the above entitled matter be and the same hereby is continued to the 14th day of
174 March, 1914, at 9 A. M. for further hearing on settlement of said final account.

[SEAL.]

CHAS. R. GRAY,
Special Judge.

O. K.
WHITE & WIDDOWS,
Att'ys for Laban Miles.

O. K.
EMBRY & HASTINGS,
Att'ys for John K.

Endorsed: Filed Mar. 14, 1914. Belva L. Moore, Clerk County Court.

175 In the County Court in and for Osage County, State of Oklahoma.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee No. 256, Deceased, on Hearing of Final Account of Administrator.

Answer of John Kenny.

Comes now John Kenney and answering the plea of res adjudicata filed herein by Laban Miles, denies each and every allegation therein contained, except such as herein expressly admitted.

(2) For further answer, this John Kenny denies that said Laban Miles was ever married to decedent, or became or is the husband or heir of decedent.

(3) And further answering, John Kenney, alleges:

(*a*) That said previous administration was a nullity and of no effect, as the Court was without jurisdiction, and the said Laban Miles, having petitioned for this administration, is estopped to plead any previous administration.

(*b*) That the District Court rendering the judgment set up in said plea and referred to as the action between Laban Miles, plaintiff, and John Kenney, defendant, was without jurisdiction to hear or determine the same or to render any judgment therein, that the lands therein described were the restricted lands and allotments of the decedent, and that the decedent was a full blood Osage allottee who had not received a certificate of competency.

(*c*) That said decedent, said Laban Miles and said John Kenny are and were members of the Osage Tribe of Indians, of the full blood, residing in Osage County, Oklahoma, neither of whom

176 have received a certificate of competency, and all of whom were and are incompetent Indians; and the Secretary of the Interior refused and failed to confirm or approve said judgment and proceedings of said District Court, and the same is void and of no effect.

EMBRY & HASTINGS,
Attorneys for John Kenney.

Endorsed: Service accepted this 12th day of March, 1914. James A. Carroll, Superintendent, Per F. A. B.

Endorsed: Filed Mar. 12, 1914. Belva L. Moore, Clerk County Court.

177 In the County Court of Osage County, State of Oklahoma.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee, No. 256, Deceased, on hearing of Final Account of Administrator.

Motion.

Comes now Laban Miles, by White & Widdows, his attorneys, and moves the Court to strike all that part and the parts of the answer of John Kenney to the Plea of Res Adjudicata of Laban Miles, designated as (2), (3), and (a), (b), and (c), for the following reasons:

First: That each and all of said matters so designated in said answer are Res Adjudicata and have been passed on by this Court in the ruling on the Demurrer of said John Kenny to said Plea of Res Adjudicata.

Second: For the reasons that said matters and things designated as herein above stated are surplusage and incumbrance of the record and said John Kenny is precluded by the Plea of Res Adjudicata from introducing any evidence in support of any allegation therein contained.

WHITE & WIDDOWS,
Attorneys for Laban Miles.

Endorsed: Filed Mar. 14, 1914, Belva L. Moore, Clerk County Court.

Service of within paper and receipt of a true copy thereof is hereby acknowledged this 14 day of March, 1914.

JAMES A. CARROLL,
Supt. Osage Indian School,
Per N. R.

178 STATE OF OKLAHOMA,
County of Osage:

In the County Court.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee, No. 265, Deceased.

Journal Entry.

Now on this 14th day of March, 1914, the above entitled matter coming on for hearing upon motion of Claimant, Laban Miles, to strike that part of the answer of John Kenny, to the plea of res adjudicata, designated as (2), (3), and (a), (b) and (c), and the Court having heard the argument of counsel and being fully advised in the premises finds that said motion should be sustained as to

that part of said answer designated as "(2)" and overruled as the parts designated as "(3)", and "(a)", "(b)", and "(c)".

It is therefore ordered, adjudged and decreed by the Court that said motion be and the same hereby is sustained as to that part of said answer designated as "(2)", and overruled as to that part of said answer designated as "(3)", and "(a)", "(b)" and "(c)", and to part sustained the said John Kenny excepts, and to the parts overruled the said Laban Miles excepts.

[SEAL.] CHAS. R. GRAY,
Special Judge.

Endorsed: Filed Mar. 16, 1914, Belva L. Moore, Clerk County Court. Recorded in P. J. 3—Pages 334 and 335.

179 STATE OF OKLAHOMA,
County of Osage, ss:

In the County Court.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee, No. 256, Deceased.

Journal Entry.

Now on this 14th day of March, 1914, the above entitled matter coming on for hearing before Chas. R. Gray, Special Judge, pursuant to continuance as per Journal Entry in said matter made and rendered on the 28th day of February, 1914; claimant, Laban Miles, appearing by White & Widdows, his attorneys; and claimant, John Kenney, appearin*b* by John Embry and A. S. Sands, his attorneys, and further appearing in his own proper person; and the Court having heard the evidence and the arguments of counsel, and being fully advised in the premises finds:

That the final account rendered by John L. Bird, administrator of the estate of said Lah-tah-sah, deceased, is true and correct, that said administrator has made no profit out of said estate and has made disbursements as stated in said accounts, and statement of disbursements since rendition of said final account, and that said disbursements should be approved.

The Court further finds that the Administrator is entitled to the sum of $12.00 as commission on amount of money belonging to said estate received and accounted for by said administrator.

The Court further finds from the evidence that the sole and only heirs of said Lah-tah-sah, deceased, are Laban Miles, surviving husband, and John Kenny, the only issue of said Lah-tah-sah, deceased, and that upon her death the entire estate of said Lah-tah-sah, deceased, descended in equal shares to said Laban Miles and said John Kenny, to wit: An undivided ½ to each.

180 It is therefore ordered, adjudged and decreed by the Court that the final account of John L. Bird, administrator of said estate, be, and the same hereby is, by the Court approved, and that

said John L. Bird, deduct from the money in his hands, belonging to said estate, the sum of $12.00 as compensation for services rendered as administrator in said estate, and file a receipt therefor, in this Court; that said administrator pay the Court costs now due and unpaid, out of the money in his hands, belonging to said estate, and file receipt therefor in this Court.

It is further ordered, adjudged and decreed by the Court, that the sole and only heirs of Lah-tah-sah, deceased, are Laban Miles, surviving husband, and said John Kenny, the only issue of said Lah-tah-sah, deceased; that upon the death of said Lah-tah-sah, deceased, her entire estate descended in equal shares to said Laban Miles and said John Kenny, to wit: an undivided ½ thereof to each, and that upon the payment of costs and administration fees, as herein above provided, said administrator pay the remainder of the money now in his hands belonging to said estate, one-half to said Laban Miles, and one-half to said John Kenny, and take their receipt therefor and file same in this Court and thereupon be discharged. To all of which findings and judgment of the court said John Kenny excepts and upon his request the Court fixes appeal bond at Three Hundred Dollars.

[SEAL.]

CHAS. R. GRAY,
Special Judge.

O. K.
WHITE & WIDDOWS,
Att'ys for Laban Miles.

O. K.
JOHN EMBRY,
Att'y for John Kenny.

Endorsed: Filed this the 16 day of March 1914. Belva L. Moore, Clerk of the County Court. Recorded in P. J. 3—Pages 335 and 336.

181 In the County Court of Osage County, Oklahoma.

In the Matter of the ESTATE OF LAH-TAH-SAH, Roll No. 256, Deceased.

Motion for New Trial.

Comes now the said John Kenny, as heir at law of said deceased, and moves the court to vacate and set aside the final orders, decree and judgment herein rendered on the 14th day of March, 1914, and grant a new trial, for the following causes, which effect materially the substantial rights of the said John Kenny, as heir of said deceased:

1. Irregularity in the proceedings of the Court, by which said party was prevented from having a fair hearing and trial.

2. Irregularities in the proceedings of the prevailing party, Laban Miles, by which the said party, John Kenney, was prevented from having a fair trial.

3. Irregularity in the orders of the Court by which said party, John Kenney, was prevented from having a fair trial.

4. Misconduct of the prevailing party, Laban Miles.

5. Accident and surprise, which ordinary prudence could not have guarded against.

6. Excessive awards and allowances and interests in said estate assigned the prevailing party, Laban Miles, appearing to have been given under the influence of passion or prejudice.

7. Error in the assignment of the amount of recovery by Laban Miles.

8. That the decision and decree of the Court is not sustained by sufficient evidence.

9. That the decision, decree, and final orders of the Court are contrary to law.

182 10. Error of law occurring at the trial, and excepted to by the party making this application, John Kenney.

11. Error of the Court in overruling the demurrer of John Kenney to the plea of res adjudicata of Laban Miles.

12. Error of the Court in sustaining the motion of Laban Miles, to strike from the pleading of John Kenney, parts thereof, including paragraph 2.

13. Error of the Court in sustaining the plea of res adjudicata set up and plead herein by Laban Miles.

14. Error — the Court in refusing to admit the testimony of John Kenney, and other witnesses offered to show that Laban Miles was not married to the deceased; was not a husband of the deceased, and is not entitled to share in said estate or its assetts.

15. The court erred in refusing to hear testimony and admit evidence for the purpose of determining the legal heirs of said deceased.

16. The court erred in holding that the heirs at law of said deceased had been legally determined by a court of competent jurisdiction.

17. The court erred in sustaining the oral motion of Laban Miles, to order and decree an approval of the accounts of the Administrator herein, and a distribution of the assets of said estate.

18. The court erred in admitting evidence in support of the plea of Laban Miles, setting forth a prior adjudication and determination by the District Court of said County of the heirs of said deceased, and holding that Laban Miles is entitled to participate in the assets of the estate.

EMBRY & HASTINGS AND
A. S. SANDS,
Attorneys for John Kenney.

Endorsed: Filed Mar. 17, 1914. Belva L. Moore, Clerk County Court.

183 In the County Court of Osage County, Oklahoma.

In the Matter of the ESTATE of LAH-TAH-SAH, Osage Allottee, No. 256, Deceased.

Journal Entry.

This cause coming on to be heard this 19th day of March, 1914, one of the judicial days of the January, 1914, term of said court, upon the Motion for New Trial of John Kenney, as heir of said deceased, and all parties interested being represented by their respective attorneys, after presentation of said Motion and examination of the same by the Court, and the Court being fully advised in the permises, the said Motion is by the Court overruled and denied, to which ruling the said John Kenny in open court duly excepts, and said exception is by the Court allowed.

CHAS. R. GRAY,
Special Judge of County Court in Probate.

O. K.
WHITE & WIDDOWS,
Attorneys for Laban Miles.

O. K.
EMBRY & HASTINGS AND
A. S. SANDS,
Attorneys for John Kenny.

Endorsed: Filed Mar. 21, 1914. Belva L. Moore, Clerk County Court. Recorded in P. J. 3—pages 340 and 341.

184 In the County Court of Osage County, Oklahoma.

In the Matter of the ESTATE of LAH-TAH-SAH, Osage Allottee, Roll No. 256, Deceased.

Appeal Bond.

Whereas, on March 14th, 1914, in the Matter of the Estate of Lah-tah-sah, Osage Allottee, No. 256, deceased, pending in the County Court of Osage County, Oklahoma, upon the final report of the administrator, and for the settlement of such final account, and for distribution of said estate, and upon the pleadings and issues therein between Laban Miles and John Kenney, contesting claimants, the said Laban Miles by the judgment and consideration of said court was adjudged to be one of the heirs of said Lah-tah-sah, deceased, and entitled to one-half interest in said estate, and to receive one-half of the money in the hands of the administrator, after payment of costs and fees of administration, and the administrator's account being also settled in said decree; and,

Whereas, said John Kenney has appealed therefrom to the District Court of said Osage County, upon both questions of law and fact, and the Judge of said County Court having fixed the amount of said appeal bond at $300.00,

Now, therefore, we, John Kenney, as principal, and F. W. Farrar, residing at Pawhuska, Oklahoma, and Necia Kenney, residing at Fairfax, Oklahoma, hereby undertake and bind themselves to the State of Oklahoma, in the full sum of $300.00 that the appellant, John Kenney, will prosecute his appeal with due diligence to a determination, and will abide, fulfill and perform whatever judgment, decree or order may be rendered against him in that proceeding by the District Court, and that he will pay all damages which
185 the opposite party may sustain by reason of such appeal, together with all costs that may be adjudged against him.

Witness our hands this 14- day of March, 1914.

JOHN KENNEY.
F. W. FARRAR.
NECIA KENNEY.

The above undertaking filed and the same and sureties thereon approved this 20" day of March, 1914.

CHAS. R. GRAY,
Special Judge County Court, Osage County, Oklahoma.

STATE OF OKLAHOMA,
County of Osage, ss:

F. W. Farrar and Necia Farrar, being duly sworn, each for himself says that he is one of the sureties on the foregoing bond, and that he is worth in property, subject to execution the sum of $600.00 over and above his debts, liabilities and exemptions.

F. W. FARRAR.
NECIA KENNEY.

Subscribed and sworn to before me this 15" day of March, 1914.

WILLIAM A. DANIELS,
[SEAL.] *Notary Public.*

My commission expires Oct. 9, 1916.

Endorsed: Filed March 21, 1914. Belva L. Moore, Clerk County Court.

186 STATE OF OKLAHOMA,
County of Osage, ss:

In the County Court of Osage County, Oklahoma.

In the Matter of the ESTATE of LAH-TAH-SAH, Osage Allottee, No. 256, Deceased.

To John Bird, Administrator, Laban Miles, Claimant, and White & Widdows, his attorneys of record, and the Judge of said Court, and Hon. Chas. R. Gray, Special Judge in said cause and court, and all persons interested in the above-entitled estate:

Notice is hereby given that John Kenny, heir at law of Lah-tah-sah, Osage Allottee No. 256, Deceased, and claimant to the estate of said decedent, appeals to the District Court of Osage County, Oklahoma, on both question of law and fact, from the County Court of Osage County, Oklahoma, and the judgment rendered in said Court, in the above-entitled matter, by the Hon. Chas. R. Gray, Special Judge, on, to-wit: March 14, 1914, finding that the said Laban Miles is the surviving husband and heir of the said Lah-tah-sah, deceased, and distributing to the said Laban Miles one-half of the estate of the said Lah-tah-sah, deceased, which said judgment and order, omitting the formal parts, is in substance as follows, to-wit:

"Now on this 14th day of March, 1914, the above-entitled matter coming on for hearing before Chas. R. Gray, Special Judge, pursuant to continuance as per Journal Entry in said matter made and rendered on the 28th day of February, 1914, Claimant Laban Miles, appearing by White & Widdows, his attorneys, and Claimant John Kenney appearing by John Embry and A. S. Sands, his attorneys, and further appearing in his own proper person;
187 and the Court having heard the evidence and the argument of counsel, and being fully advised in the premises, finds:

That the final account rendered by John L. Bird, administrator of the estate of said Lah-tah-sah, deceased, is true and correct, and that said administrator has made no profit out of said estate and has made disbursements as stated in said account, and statement of disbursements since rendition of said final account, and that said disbursements should be approved.

The court further finds that the administrator is entitled to the sum of $12.00 as commission on amount of money belonging to said estate received and accounted for by said administrator.

The Court further finds from the evidence that the sole and only heirs of said Lah-tah-sah, deceased, are Laban Miles, surviving husband, and John Kenney, the only issue of said Lah-tah-sah, deceased, and that upon her death the entire estate of said Lah-tah-sah, deceased, descended in equal shares to said Laban Miles and said John Kenney, to-wit: an undivided one-half to each.

It is therefore ordered, adjudged and decreed by the Court that the final account of John L. Bird, administrator of said estate, be, and the same is hereby, by the Court, approved, and that said John

L. Bird deduct from the money in his hands belonging to said estate the sum of $12.00 as compensation for services rendered as administrator in said estate, and file a receipt therefor in this Court; that said administrator pay the court costs now due and unpaid, out of the money in his hands, belonging to said estate and file a receipt therefor in this Court.

It is further ordered, adjudged and decreed by the court that the sole and only heirs of Lah-tah-sah, deceased, are Laban Miles,
188 surviving husband, and said John Kenney, the only issue of said Lah-tah-sah, deceased; that upon the death of the said Lah-tah-sah, deceased, her entire estate descended in equal shares to said Laban Miles and said John Kenney, to-wit: an undivided one-half thereof to each, and that upon the payment of costs and administration fees, as herein above provided, said administrator pay the remainder of the money now in his hands belonging to said estate, one-half to said Laban Miles, and one-half to said John Kenney, and take their receipt therefor and file same in this Court and thereupon be discharged.

To all of which findings and judgment of the Court, said John Kenney excepts, and upon his request the Court fixes the appeal bond at Three Hundred ($300.00) Dollars.

Second.

And appeals to said District Court from the subsequent order of said County Court, overruling motion for new trial in said cause.

Third.

And appeals to said District Court from the previous order of said County Court, on towit: February 28, 1914, overruling demurrer of said John Kenney to the plea of res adjudicata filed in said matter and cause by said Laban Miles, and upon said question of law the said John Kenney will rely principally upon the grounds that the findings, judgment and decree of the District Court of Osage County, Oklahoma, in the case of Laban Miles vs. John Kenney, defendant, a copy of which is attached to said plea of res adjudicata, is not res adjudicata of the issues therein involved and does not estop the said John Kenney from disputing the findings, and judgments therein contained, and that the said Lah-tah-sah, John Kenney, and Laban Miles, were, and are full blood, incompetent Osage Indians,
189 members of the Osage Tribe of Indians, residing in Oklahoma, to whom no certificates of competency have ever been issued, and that said judgment and decree was an attempt to partition the restricted allotments and lands of the said Lah-tah-sah, deceased, and the said findings, judgment and proceedings have never been approved by the Honorable Secretary of the Interior.

Fourth.

And appeals to said District Court from the previous order of the said Hon. Chas. R. Gray, Special Judge, rendered on, to-wit: March

14, 1914, striking out of the second paragraph of the answer of the said John Kenney, and that the said John Kenney on said question, intends to rely principally upon the grounds that the said Laban Miles was not married to said deceased, and did not become, and is not the husband or heir of said decedent, and that the said John Kenney is entitled to introduce proof to show that the said Laban Miles was never married to the decedent, and was not the husband of the decedent, and is not an heir of the decedent.

That the said judgments and orders made and rendered in said County Court by the said Special Judge thereof, directed the distribution of the estate, and part of the estate of the said Lah-tah-sah, deceased, and were judgments, decrees and orders of said court affecting the substantial rights of this said appellant, John Kenney.

And said John Kenney will ask a trial de novo in said District Court, to the end that he may be decreed the sole heir of said decedent, and that the whole of said estate be distributed to him.

JOHN KENNEY,
By JOHN EMBRY,
Attorney for John Kenney.
A. S. SANDS,
EMBRY & HASTINGS,
Attorneys for John Kenney.

Service of the foregoing and a copy thereof acknowledged and received this 20th day of March, 1914

WHITE & WIDDOWS,
Attys. for Laban Miles.
CHAS. R. GRAY,
JOHN L. BIRD.

Endorsed: Filed Mar. 21, 1914, Belva L. Moore, Clerk County Court.

190 STATE OF OKLAHOMA,
County of Osage, ss:

In the County Court.

Certificate of Appeal.

I, Chas. R. Gray, Judge of said County Court, in the above entitled cause do hereby certify that the within and foregoing is a full, true and correct transcript and copy of the Appeal Bond, Notice of Appeal, Judgment and Decree appealed from, and of the minutes, records and papers and proceedings in said cause, as the same appears of record in this office.

Cost of transcript $6.50, due County Court.

[SEAL.]

CHAS. R. GRAY,
Special Judge of Said Court.

Attest:
BELVA L. MOORE,
Clerk of Said Court.
[SEAL.]

Endorsed: District Court, State of Oklahoma, County of Osage. Filed Apr. 1, 1914, Thos. Leahy, Jr., Clerk District Court, by A. B. Cotter, Deputy.

191 STATE OF OKLAHOMA,
County of Osage, ss:

In the District Court of Osage County, Oklahoma.

No. 2372.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee, #256, Deceased, on Appeal from the County Court to the District Court.

Motion to Dismiss Appeal.

Comes now Laban Miles, Osage Allottee No. 507, a party in interest and moves the court to dismiss the above entitled matter and the appeal thereof for the following reasons:

1st. That the court has no jurisdiction of the subject matter involved.

2nd. That the District Court has no appellate jurisdiction in probate matters wherein the decedent at the time of death was an enrolled Osage Indian to whom no certificate of competency had been issued.

3rd. That the court has no jurisdiction to change, modify, affirm or reverse the decision and judgment of the County Court rendered in the above matter, determining and ascertaining the legal heirs of said Lah-tah-sah, deceased, for the reason that by an act of Congress approved April 18th, 1912, (Public No. 125), provided that the property of deceased Osage Allottees shall, in probate matters be subject to the jurisdiction of the County Court.

H. P. WHITE,
Attorney for Laban Miles.

Endorsed: Filed this the 1st day of March, 1915. Thos. Leahy, Clerk of the Dist. Court, by Eula B. Foley, Deputy Clerk.

192 STATE OF OKLAHOMA,
County of Osage:

In the District Court of Osage County, Oklahoma.

No. 2372.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee, #256, Deceased, on Appeal from the County Court to the District Court.

Now on this 1st day of March, 1915, the same being a regular judicial day of the March, 1915, term of said court, the Hon. R. H.

Hudson, District Judge of the Twenty-Fourth Judicial District being disqualified to serve as such in the above entitled cause by reason of having been of counsel for one of the parties and in lieu of an election to elect a special judge, the parties to the above mentioned matter by their respective attorneys agree that A. R. Museller be and he hereby is agreed upon as special judge to try the issues in the above entitled matter with like jurisdiction as the regular judge in such cases. And it is agreed his power as such special judge continue from term to term until the appeals in this case are perfected if any be taken.

JOHN EMBRY,
Attorney for John Kenney.
H. P. WHITE,
Attorney for Laban Miles.

Endorsed: Filed this the 1st day of March, 1915. Thos. Leahy, Clerk of the Dist. Court, by Eula B. Foley, Deputy Clerk.

193 STATE OF OKLAHOMA,
County of Osage, ss:

In the District Court of Osage County, Oklahoma.

No. 2372.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee, #256, Deceased, on Appeal from the County Court to the District Court.

Oath of Special Judge.

I, A. R. Museller, do solemnly swear that I will support, obey, and defend the Constitution of the United States, and the Constitution of the State of Oklahoma, and will discharge the duties of my office as Special Judge in the above entitled matter with fidelity; that I have not paid, or contributed, either directly or indirectly, any money or other valuable thing, to procure my nomination, election or appointment; that I have not, knowingly, violated any election law of the State, or procured it to be done by others in my behalf; that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law, and I further swear that I will not receive, use or travel upon any free pass or on free transportation during my term of office.

A. R. MUSELLER.

Subscribed and sworn to before me this 8th day of March, 1915.
[SEAL.] THOS. LEAHY, *Court Clerk.*
By EULA B. FOLEY, *Deputy.*

Endorsed: Filed Mar. 8, 1915. Thos. Leahy, Court Clerk.

194 STATE OF OKLAHOMA,
County of Osage, ss:

In the District Court of Osage County, Oklahoma.

No. 2372.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee #256, Deceased, on Appeal from the County Court to the District Court.

Journal Entry Overruling Motion to Dismiss the Appeal.

Now on this 8th day of March, 1915, the same being a regular judicial day of the March, 1915, term of said court the above entitled cause comes on for hearing before A. R. Museller, Special Judge, upon a motion of Laban Miles, appellee, to dismiss the appeal, appellant, John Kenney, appearing by John Embry, his attorney, and appellee, Laban Miles, appearing in his own proper person and by H. P. White, his attorney, and the court having heard the argument of counsel and being fully advised in the premises finds that the said motion to dismiss the appeal should be overruled, to which finding of the court said Laban Miles objects and excepts, which objections and exceptions are by the court allowed. It is therefore ordered, adjudged and decreed by the court that the motion of said Laban Miles, appellee, to dismiss the appeal be and the same hereby is by the court overruled, to which ruling of the court said Laban Miles objects and excepts, which objections and exceptions are by the court allowed.

By agreement of the parties and their respective counsel it is further ordered by the court that further hearing in the above entitled matter be adjourned to April 2nd, 1915.

A. R. MUSELLER,
Special Judge.

195 O. K.

H. P. WHITE,
Attorney for Laban Miles.
JOHN EMBRY,
Attorney for John Kenney.

Endorsed on back as follows: Filed March 8, 1915, Thos. Leahy, County Clerk, by Eula B. Foley, Deputy.
Rec. Journ. 7, page 408.

196 In the District Court of Osage County, Oklahoma.

Honorable A. R. Museller, Special Judge, Presiding.

Case No. 2372.

In the Matter of the ESTATE OF LAH-TAH-SAH, Deceased, Osage Allottee, No. 256, on Appeal from the County Court of Osage County.

Now on this April 2, 1915, the same being a judicial day of the regular March 1915, term of said court, Special Judge Honorable A. R. Museller, presiding, the above entitled matter came on for hearing upon the demurrer of the Appellant, John Kenney, to the plea of res adjudicata of the said Laban Miles, and after due argument by Counsel, and consideration thereof by the Court, the Court overrules the demurrer, to which ruling, the said John Kenney excepts.

Thereafter, and on the same day, the said matter came on for hearing in said court, the said Special Judge, presiding, upon the motion of the said Laban Miles, as appears in the record, to strike from the answer of the said John Kenney, certain of the designated paragraphs of such answer, and after argument by counsel and consideration thereof by the court, the Court sustains the motion of Laban Miles to strike paragraph 2, and also sustains as to Paragraph 3-a, paragraph 3-b, and paragraph 3-c, and the said John Kenney excepts to such ruling; and the said John Kenney specially excepts to the ruling, striking out the second section referred to as the second section; and the said John Kenney specially excepts to the ruling of the Court in striking out paragraph No. 2, of said answer; and John Kenney specially excepts to the ruling of the Court, striking out paragraph 3-a of said answer; and John Kenney specially excepts to the ruling of the Court in striking out paragraph 3-b of said answer; and John Kenney specially excepts to the ruling of the Court in striking out paragraph 3-c of said answer.

197 STATE OF OKLAHOMA,
County of Osage, ss:

In the District Court of Osage County, Oklahoma.

No. 2372.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee #256, Deceased, on Appeal from the County Court to the District Court.

Journal Entry of Judgment.

Now on this 2nd day of April, 1915, same being a regular judicial day of the March 1915 term of said court, the above entitled matter

came on regularly for hearing before A. R. Museller, Special Judge, pursuant to adjournment had on March 8th, 1915, the appellant John Kenney, appearing in his own proper person and by John Embry, his attorney, and appellee, Laban Miles, appearing in his own proper person and by H. P. White, his attorney, and said cause coming up for hearing first on the demurrer of appellant, John Kenney, to the plea of res adjudicata of the appellee, Laban Miles, and the court having heard the argument of counsel and being fully advised in the premises finds that said demurrer to said plea of res adjudicata should be overruled, to which finding of the court said John Kenney objects and excepts, which objections and exceptions are by the court allowed.

It is therefore, ordered, adjudged and decreed by the court that said demurrer to said plea of res adjudicata be and the same hereby is by the court overruled, to which ruling of the court said John Kenney objects and excepts, which objections and exceptions are by the court allowed.

Thereafter, to wit: on the 2nd day of April, 1915, the above entitled cause came on further for hearing before A. R. Museller, Special Judge, upon a motion of appellee, Laban Miles, to strike portions of the answer of said John Kenney to the plea of res adjudicata of the said Laban Miles, the parties further appearing as hereinabove stated and the court having heard the argument
198 of counsel and being fully advised in the premises finds that said motion should be sustained, to which ruling of the court said John Kenny objects and excepts, which said objections and exceptions are by the court allowed.

It is therefore, ordered, adjudged, and decreed by the court that said motion to strike all that part and parts of said answer of John Kenney to the plea of res adjudicata by said Laban Miles designated as "2", "3a", "3b", and "3c" be, and the same hereby is, by the court, sustained, to which ruling of the court the said John Kenny specially excepts to said ruling of the court as to that part of the answer designated as "2" and further specially excepts to the ruling of the court as to that part of the answer designated as 3a and specially excepts to the ruling of the court as to that part of the answer designated as "3b", and further specially excepts to the ruling of the court as to that part of the answer designated as "3c", which objections and exceptions are by the court allowed.

Thereafter, to wit: on the 2nd day of April, 1915, the above entitled matter came on regularly for hearing before A. R. Museller, Special Judge, pursuant to adjournment had on March 8th, 1915, upon the final account of John L. Bird, Administrator, the exceptions filed thereto by appellant, John Kenny, the plea of res adjudicata filed by the appellee, Laban Miles, and the answer of John Kenny to the said plea of res adjudicata by said Laban Miles. The appellant, John Kenny further appearing in his own proper person and by John Embry, his attorney and the appellee, Laban Miles, further appearing in his own proper person and by H. P. White, his attorney, and all parties waive trial by jury and announce ready for trial by the court. Thereupon the appellee, Laban Miles, offers

his testimony, and rests, and thereupon, appellant, John Kenny, offers his testimony, and rests, and the court having heard the evidence and the argument of counsel and being fully advised in the premises finds that the final account rendered by John L. Bird, administrator of the estate of said Lah-tah-sah, deceased, is true
199 and correct; that said administrator has made no profit out of the estate and has made disbursements as stated in said account and statement of disbursements since rendition of said final account and that said disbursements should be approved. The Court further finds that the administrator is entitled to the sum of $12.00 as commission on the amount of money belonging to said estate received and accounted for by said administrator.

The court further finds from the evidence that the heirs of the estate of said Lah-tah-sah, deceased, have heretofore been determined by the District Court of Osage County, Oklahoma, in the partition suit of Laban Miles, plaintiff, vs. John Kenny, defendant, No. 1896, as per judgment of court pleaded herein by said Laban Miles as a plea of res adjudicata. That said plea of res adjudicata should be sustained.

The court further finds from the evidence that the sole and only legal heirs of said Lah-tah-sah, deceased, are appelle-, Laban Miles, surviving husband, and appellant, John Kenny, the only living issue of said Lah-tah-sah, deceased; that upon the death of said Lah-tah-sah, deceased, her entire estate, consisting of lands, moneys and mineral interests, acquired by her through the division of the lands of the Osage Indians in Oklahoma, and the segregation of moneys belonging to said tribe by the United States, as a member of the Osage Tribe of Indians, descended in equal shares to said Laban Miles, surviving husband and said John Kenny, only living child, to-wit: an undivided one-half to each; that the judgment of the County Court of Osage County, Oklahoma, rendered on the 14th day of March, 1914, appealed from, should in all things be affirmed, to all of hich findings, said John Kenny objects and excepts, which objections and exceptions are by the court allowed.

It is, therefore, ordered, adjudged and decreed by the court that the plea of res adjudicata of appellee, Laban Miles, should be, and the same hereby is, by the court, sustained and that the final
200 account of said John L. Bird, administrator of said estate, be, and the same hereby is, by the court, approved and that said John L. Bird deduct from the money in his hands belonging to said estate the sum of $12.00 as compensation for services rendered by him in said estate and file a receipt therefor; that said administrator pay the accrued costs in the county court now unpaid less the cost of preparing transcript for appeal, out of the money in his hands belonging to said estate, and file receipt therefor; that appellant, John Kenny, pay the costs accruing on appeal, including the costs of transcript in the county court.

It is further ordered, adjudged and decreed by the court that the sole and only heirs of Lah-tah-sah, deceased, Osage Allottee, No. 256, are Laban Miles, surviving husband, and John Kenny, the only living issue of said Lah-tah-sah, deceased, at the time of her death;

that upon the death of said Lah-tah-sah, deceased, her entire estate descended in equal shares to said Laban Miles and to said John Kenny, to-wit: an undivided one-half thereof to each, and that upon the payment of costs and administration fees by said administrator as herein provided that said administrator pay the remainder now in his hands belonging to said estate- one-half to said Laban Miles and one-half to said John Kenny and take their receipt therefor, to all of which rulings, orders and judgment of the court said John Kenny objects and excepts, which objections and exceptions are by the court allowed.

A. R. MUSELLER,
Special Judge.

O. K.
H. P. WHITE,
Attorney for Laban Miles.
JOHN EMBRY,
Attorney for John Kenn-y.

Endorsed: Filed Apr. 2, 1915. Thos. Leahy, Court Clerk. By Eula B. Deputy.

Rec. Journ. 7 page 461.

201 In the District Court of Osage County, Oklahoma.

Honorable A. R. Museller, Special Judge, presiding.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee, No. 256, Deceased, on Appeal from the County Court of Osage County, Oklahoma.

Motion for New Trial.

Comes now John Kenn-y, heir at law of the said Lah-tah-sah, deceased, and moves the Court to vacate and set aside the findings, decree and judgment herein, and grant this Movant a new trial, for the following errors and causes which effect materially the sub excepted to by John Kenny.

1. Error of law committed by the Court in overruling the demurrer of John Kenny to the plea of res adjudicata herein, and excepted to by John Kenn-y.

2. Error of law committed by the Court in sustaining the motion of the said Laban Miles in striking out Paragraph 2 of this Movant Answer herein, and excepted to by John Kenny.

3. For error of law on the part of the Court in sustaining said motion in striking out Paragraph 3-*a* of said Answer, and excepted to by John Kenny.

4. For error of law by the Court in sustaining said motion in striking out Paragraph 3-*b* of said Answer, and excepted to by John Kenny.

5. And for error of law by the Court in sustaining said motion in striking out Paragraph 3-c of said answer, and excepted to by John Kenny.

6. For error of law committed by the Court at the trial, in excluding competent, material, and relevant testimony offered by
202 the said John Kenny in his behalf, and which rulings were excepted to by said John Kenny at the time.

7. For errors of law committed by the Court at the trial in admitting incompetent, irrelevant and immaterial testimony offered by the said Laban Miles, and objected to by this Movant, to which this Movant, John Kenny, excepted at the time.

8. For errors of law occurring at the trial and excepted to by this Movant, John Kenny, at the time.

9. For the reason that the finding, decision and decree of the court are not sustained by sufficient evidence, but are contrary to the evidence.

10. That the decree, decision and finding of the court is contrary to law.

11. For error of the court in sustaining the plea of res adjudicata set up and plead herein by the said Laban Miles, and for the refusal of the court to permit this Movant to introduce testimony touching the fact whether or not the said Laban Miles was ever married to the deceased, and excepted to by John Kenny at the time.

12. For errors of law occurring at the trial in that said John Kenny was not granted a trial de novo in this court, and was not granted a trial of the rights of heirs to the estate and property of said deceased, to which said John Kenny excepted at the time.

13. For errors of law committed at the trial by the court in refusing to admit the testimony offered for the purpose of showing that the said Laban Miles was not married to the said Lah-tah-sah, and was not an heir of the said Lah-tah-sah, which ruling was excepted to by the movant at the time.

14. The court erred at the trial in refusing to hear the testimony for the purpose of determining the legal heirs of the said
203 deceased, and in holding that the issues in that respect was concluded by the finding and judgment set up and contained in the said writing, marked "Laban Miles' Exhibit 4", a former judgment of the District Court of said county, to which John Kenny excepted at the time.

15. The court committed errors of law at the trial in admitting evidence in support of the plea of Laban Miles setting forth the prior adjudication and determination of the district court of said county, of the heirs of said deceased.

16. The court committed errors of law at the trial in permitting Laban Miles to introduce the said Exhibit 4, and the other exhibits relating thereto, for the reason that they have never been approved by the Secretary of the Interior, and pertain to the restricted lands of the deceased Osage Allottee.

For error of law in the assessment of the amount of recovery which was excessive in that the judgment attempts to make distribution of lands and moneys of deceased belonging to her as

an Osage Indian Allottee, which are restricted and not within the jurisdiction of said court.

JOHN EMBRY,
Attorney for John Kenny.

Endorsed: Filed Apr. 2, 1915. Thos. Leahy, Court Clerk. By Eula B. Foley, Deputy.

204 STATE OF OKLAHOMA,
County of Osage, ss:

In the District Court of Osage County, Oklahoma.

No. 2372.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee, #256, Deceased, on Appeal from the County Court to the District Court.

Now on this 2nd day of April, 1915, the same being a regular judicial day of the March, 1915, term of said court the above entitled matter came on for further hearing before A. R. Museller, Special Judge, upon a motion of appellant, John Kenny for a new trial said John Kenney appearing in his own proper person and by John Embry, his attorney and appellee, Laban Miles, appearing in his own proper person and by H. P. White, his attorney and the court having heard the argument of counsel and being fully advised in the premises finds that said motion for new trial should be overruled to which finding of the court the said John Kenny objects and excepts, which objections and exceptions are by the court allowed.

It is therefore ordered, adjudged and decreed by the court that said motion of the said John Kenny for a new trial be and the same hereby is by the court overruled to which ruling of the court the said John Kenny objects and excepts, which objections and exceptions are by the court allowed.

Thereupon said John Kenny asks 90 days in which to make and serve a case made; that said Laban Miles be allowed 10 days thereafter in which to suggest amendments to said case made and that said case made be signed and settled on 5 days written notice by either party and that said John Kenny be allowed 120 days to file petition in error in the Supreme Court.

205 It is, therefore, further ordered, by the court that for good cause shown said John Kenny have 90 days in which to make and serve a case made for appeal to the Supreme Court; that said Laban Miles have 10 days thereafter in which to suggest amendments to said case made, said case made to be settled and signed on 5 days written notice by either party, and that said John Kenny have 120 days to file petition in error in the Supreme Court.

And for good cause shown it is further ordered by the court

that said John Kenny have 20 days in which to file a supersedeas bond in the sum of $106.00.

A. R. MUSELLER,
Special Judge.

O. K.
H. P. WHITE,
Attorney for Laban Miles.
JOHN EMBRY,
Attorney for John Kenny.

Endorsed: Filed April 2, 1915, Thomas Leah, Court Clerk, by Eula B. Foley, Deputy.

Recorded Journal 7, page 460.

206 STATE OF OKLAHOMA,
Osage County, ss:

In the District Court of Osage County, Oklahoma

No. 2372.

In the Matter of the ESTATE OF LAH-TAH-SAH, Osage Allottee, #256, Deceased, on Appeal from the County Court to the District Court.

I, Thos. Leahy, Court Clerk and Clerk of the District Court for said county, do hereby certify that the foregoing is a full, true and correct transcript of the record in the above entitled cause.

In Testimony Whereof, I have hereunto set my hand and seal of this court, this the 25th day of September, 1915.

[SEAL.] THOS. LEAHY,
Court Clerk.

207 In the Supreme Court of the State of Oklahoma.

JOHN KENNY, Plaintiff in Error,

vs.

LABAN MILES and JOHN L. BIRD, Administrator of the Estate of Lah-tah-sah, Osage Allottee, #256, Deceased, Defendants in Error.

I, the undersigned, John L. Bird, Administrator of the estate of Lah-tah-sah, Osage Allottee #256, deceased, defendant in error in the above entitled cause, waive the issuance and service of summons in error in the above entitled cause in the Supreme Court of

the State of Oklahoma, and make this my general appearance in said cause and court.

JOHN L. BIRD,
Administrator of the Estate of Lah-tah-sah,
Osage Allottee #256, Deceased,
Defendant in Error.

Filed Sept. 28, 1915. William M. Franklin, Clerk.

208 And thereafter, to-wit, on the 14th day of December, 1915, in the Supreme Court of the State of Oklahoma, the following proceedings were had, in said cause:

Supreme Court, October Term, 1915, December 14th, 1915, Thirty-sixth Judicial Day.

7708.

JOHN KENNY, Plaintiff in Error,

vs.

LABAN MILES et al., Defendants in Error.

And now on this day it is ordered by the court that plaintiff in error be allowed 20 days in which to file response to the motion to dismiss filed herein.

209 And thereafter, to-wit: on the 27th day of December, 1915, in the Supreme Court of the State of Oklahoma, the following proceedings were had, in said cause:

In the Supreme Court of the State of Oklahoma.

7708.

JOHN KENNY, Plaintiff in Error,

vs.

LABAN MILES et al., Defendants in Error.

And now on this Dec. 27, 1915, it is ordered by the court that plaintiff in error be allowed until January 15, 1916, to file brief resisting motion to dismiss.

210 And thereafter, to-wit, on January 15, 1916, in the Supreme Court of the State of Oklahoma the following proceedings were had in said cause:

In the Supreme Court of the State of Oklahoma.

7708.

JOHN KENNY, Plaintiff in Error,

vs.

LABAN MILES et al., Defendants in Error.

And now on this, Jan. 15, 1916, it is ordered by the court that the time to file brief resisting motion to dismiss be extended for a period of 5 days.

211 And thereafter, to-wit, on January 18th, 1916, in the Supreme Court of the State of Oklahoma, the following proceedings were had in said cause:

Supreme Court, January Term, 1916, January 18th, 1916. Sixth Judicial Day.

7708.

JOHN KENNY, Plaintiff in Error,

vs.

LABAN MILES et al., Defendants in Error.

And now on this day it is ordered by the court that E. R. Hastings be permitted to file brief out of time in response to motion to dismiss.

212 And thereafter, to-wit, on February 29th, 1916, in the Supreme Court of the State of Oklahoma, the following proceedings were had in said cause:

Supreme Court, January Term, 1916, February 29th, 1916. Eighteenth Judicial Day.

7708.

JOHN KENNY, Plaintiff in Error,

vs.

LABAN MILES et al., Defendants in Error.

And now on this day it is ordered by the court that the motion to dismiss, filed Dec. 7, 1915, be, and the same is hereby overruled.

213 And thereafter, to-wit, on September 1st, 1916, in the Supreme Court of the State of Oklahoma, the following proceedings were had in said cause:

In the Supreme Court of the State of Oklahoma.

7708.

JOHN KENNY, Plaintiff in Error,

vs.

LABAN MILES et al., Defendants in Error.

And now on this, Sept. 1, 1916, it is ordered by the court that the above cause be set for oral argument on Oct. 2, 1916, and defendant in error herein is given permission to withdraw the case made to be corrected within 20 days from this date, under supervision of the trial court upon five days' notice to the adverse party.

214 And thereafter, to-wit, on October 2nd, 1916, in the Supreme Court of the State of Oklahoma, the following proceedings were had to-wit:

Supreme Court, July Term, 1916, October 2nd, 1916. Twenty-seventh Judicial Day.

7708.

JOHN KENNY, Plaintiff in Error,

vs.

LABAN MILES et al., Defendants in Error.

And now on this day the above cause is submitted on the record and briefs filed therein and oral argument had.

215 And thereafter, to-wit, on October 17th, 1916, in the Supreme Court of the State of Oklahoma, the following proceedings were had in said cause:

Supreme Court, October Term, 1916, October 17th, 1916. Seventh Judicial Day.

7708.

JOHN KENNY, Plaintiff in Error,

vs.

LABAN MILES et al., Defendants in Error.

And now on this day it is ordered by the court that permission be, and is hereby granted to correct the case made in the above cause as per stipulation filed in said cause.

216 And thereafter, to-wit, on January 2nd, 1917, in the Supreme Court of the State of Oklahoma, the following proceedings were had in said cause:

Supreme Court, October Term, 1916, January 2nd, 1917. Twenty-fifth Judicial Day.

7708.

JOHN KENNY, Plaintiff in Error,

vs.

LABAN MILES et al., Defendants in Error.

And now this cause comes on for final decision and determination by the court upon the record and briefs filed therein.

And the court having considered the same, finds that the judgment of the trial court in the above cause should be affirmed.

Opinion by Bleakmore, C.

By the Court: It is so ordered, the opinion herein is hereby adopted in whole, and judgment is entered accordingly.

217 In the Supreme Court of the State of Oklahoma, Supreme Court Commission, Division Number Three.

Jan. 2, 1917.—By the Court: Adopted in whole.

Filed Jan. 2, 1917. William M. Franklin, Clerk.

7708.

JOHN KENNY, Plaintiff in Error,

vs.

LABAN MILES and JOHN L. BIRD, Administrator of the Estate of Lah-tah-sah, Osage Allottee, No. 256, Deceased, Defendants in Error.

Syllabus.

1. The Act of Congress of June 28, 1906, c. 3572 34 Stat. L. 539, placed no restrictions upon the alienation by heirs of inherited lands allotted and deeded in the right of a member of the Osage Tribe of Indians after his death, save only the mineral interests therein, reserved to the Tribe, individual disposition of which is expressly inhibited.

2. The purpose of the Act of Congress of April 15, 1912, 37 Stat. L. 86, c. 83, was not to impose restrictions upon alienation of Osage lands, but to authorize the conveyance of such of said lands to which restrictions had attached by reason of their allotment to living members of the tribe, who had subsequently died, leaving surviving them Indian heirs, members of the tribe, to whom certificates of competency were issued.

Error from the District Court of Osage County, A. R. Muselle, Special Judge.

218 Action by John Kenny, Plaintiff, against Laban Miles, et al, Defendants. Judgment for defendant and plaintiff brings error.

Affirmed.

Edward R. Hastings, Paul Van Winkle, John Embry, Attorneys for Plaintiff in Error.

H. P. White, Attorney for Defendant in Error.

BLEAKMORE, *C:*

Plaintiff in error seeks reversal of a judgment of the district court of Osage County, rendered April 2, 1915, upon appeal from the county court of that county, ordering a distribution of the estate of a deceased member of the Osage Tribe of Indians, consisting of lands selected and patented in her name subsequent to her death, and certain proceeds arising from the rental thereof.

The decedent Lah-tah-sah, a member of the Osage Tribe, entitled

to a distributive share of the tribal property by virtue of an Act of Congress approved June 28, 1906, (Stat. L. 935), died intestate in 1908, before receiving the same. After her death the lands involved were selected in her right and deeds therefor, approved by the Secretary of the Interior, were executed in her name as grantee, and recorded. These lands descended to her heirs according to the laws of the State of Oklahoma.

On February 28, 1912, Laban Miles, defendant in error, began an action in the district court of Osage County to effect a partition of said lands, alleging that he was the surviving husband, and John Kenny, the plaintiff in error, the only child of Lah-tah-sah, and that upon her death each succeeded to an undivided one-half of the lands thereafter allotted and patented in her name. To this
219 petition John Kenny filed his answer and cross-petition, averring that he was the only heir of the decedent, the sole owner, in constructive possession of the premises, and entitled to the exclusive possession thereof; that the claim of Laban Miles constituted a cloud upon his title, etc., and prayed for relief accordingly. The sole controverted issue of fact in this action was the marriage of Laban Miles to Lah-tah-sah. The court after hearing evidence, made elaborate findings of fact, determined such issues in favor of Miles, ordered partition of the lands, and appointed commissioners for such purpose. Later the administrator of the estate of Lah-tah-sah filed his final report in the county court of Osage County, praying a distribution of the portion thereof in his possession, consisting of the lands allotted in her name, and the income therefrom. John Kenny appeared in such proceeding and asserted that he was the sole heir of Lah-tah-sah, and entitled to the entire estate. Laban Miles responded, setting forth that such claim had been tried and finally determined by the district court of Osage County in the partition action, and pleaded the judgment therein as conclusive of the rights of Kenny and himself to share equally in the distribution of said lands and proceeds. To this plea *the* of res judicata, Kenny demurred. The demurrer was overruled, and upon hearing the property was ordered distributed equally between him and Miles. Appeal was had to the District court, with like result.

Both Kenny and Miles are members of the Osage Tribe and neither has received a certificate of competency.

The provisions of the Act of July 28, 1906, supra, are fully set forth in the opinion of the Supreme Court of the United States in Levindale Lead & Zinc Mining Co. v. Coleman (Co. App. Ad Sheet, July 15, 1916, p. 644), as follows:
220 "That act provided that the roll of the Osage Tribe as it existed on January 1, 1906, with the additions specified, should be the roll of the tribe and constitute its 'legal membership.' Children born between January 1, 1906, and July 1, 1907, to persons whose names were on the roll on the first-mentioned date, 'including the children of members of the tribe who have, or have had, white husbands,' were to be recognized as members for the purpose of the division. (Sec. 1). All lands were to be divided 'among the members of said tribe, giving to each his or her fair share thereof

in acres' as specifically set forth; that is 'each member' as shown by the roll was to be allowed to make three selections of 160 acres each in the manner described. (Sec. 2.) Restrictions were imposed as follows:

" 'Each member of said tribe shall be permitted to designate which of his three selections shall be a homestead, and his certificate of allotment and deed shall designate the same as a homestead, and the same shall be inalienable and nontaxable, until otherwise provided by Act of Congress. The other two selections of each member, together with his share of the remaining lands allotted to the member, shall be known as surplus land, and shall be inalienable for twenty-five years, except as hereinafter provided.' (Sec. 2, Fourth).

"After 'each member' has made the three selections the remaining lands of the tribe, except as stated, were to be divided 'as equally as practicable among said members by a commission to be
221 appointed.' (Sec. 2, fifth). The Secretary of the Interior in his discretion, at the request of any 'adult member of the tribe,' was to issue 'to such member a certificate of competency, authorizing him to sell and convey any of the lands deeded him by reason of -his act, except his homestead, which shall remain inalienable and nontaxable, for a period of twenty-five years, or during the life of the homestead allottee,' if, upon investigation, 'he shall find any such member fully competent' to care for his affairs. It was provided that upon the issuance of such a certificate of competency the lands of such 'member' except homestead lands, should 'become subject to taxation,' and that 'such member,' except as provided, should have the right to 'manage, control and dispose of his or her lands the same as any citizen of the United States.' It was further provided that the surplus lands should be 'nontaxable' for the period of three years from the approval of the act 'except where certificates of competency are issued or in case of the death of the allottee, unless otherwise provided by Congress.' (Sec. 2, Seventh). Oil, gas, coal or other minerals 'covered by the lands' were 'reserved to the Osage Tribe for a period of twenty-five years.' (id. #3). All funds belonging to the tribe, and moneys accruing to it, were to be 'held in trust by the United States for the period of twenty-five years' from January 1, 1907, except as provided. The funds of the tribe, and moneys accruing from the sale of Kansas lands, together with those due upon claims against the United States, were to be segregated and placed to the credit of the 'individual members' of the tribe 'on a basis of a pro rata division,' or 'to their heirs as hereinafter provided,' and such credit was to draw interest, to be
222 'paid quarterly' to the members entitled thereto;' and the disposition of royalties from mineral leases was specially prescribed. (Sec. 4.) At the expiration of twenty-five years from January 1, 1907, the lands, mineral interests, and moneys held in trust by the United States were to be the absolute property of the 'individual members' of the tribe, according to the roll, 'or their heirs, as herein provided,' and the deeds were to be issued accordingly. (Sec. 5). Sections 6 and 7 are as follows:

" 'Sec. 6. That the lands, moneys, and mineral interests, herein

provided for, of any deceased member of the Osage Tribe shall descend to his or her legal heirs, according to the laws of the territory of Oklahoma, or of the state in which said reservation may be hereinafter incorporated, except where the decedent leaves no issue, nor husband nor wife, in which case said lands, moneys and mineral interests, must go to the mother and father equally.

" 'Sec. 7. That the lands herein provided for are set aside for the sole use and benefit of the individual members of the tribe entitled thereto, or to their heirs, as herein provided; and said members, or their heirs, shall have the right to use and to lease said lands for farming, grazing, or any other purpose not otherwise specifically provided for herein, and said member shall have full control of the same, including the proceeds thereof; Provided, That parents of minor members of the tribe shall have the control and use
223 of said minors' lands, together with the proceeds of the same, until said minors arrive at their majority: And provided further, That all leases given on said lands for the benefit of the individual members of the tribe entitled thereto, or for their heirs, shall be subject only to the approval of the Secretary of the Interior.'

"Deeds to the Osage lands were to be executed by the principal chief, but were not to be valid until approved by the Secretary of the Interior (#8), and it was further provided that whatever was necessary to carry into effect the provisions of the act should be done under the authority of this officer (#12). Regulations have been adopted by the Secretary of the Interior governing the leasing (under # # 7, 12) of lands 'allotted to Osage Indians.' These provide, among other things, that 'lands of deceased allottees may be leased by the heirs jointly', as stated. (Regulations 11, 12, approved October 25, 1910; 8, approved June 17, 1913). By joint congressional resolution approved February 27, 1909, (35 Stat. at L. 1167) it is provided: "That homesteads of members of the Osage Tribe of Indians in Oklahoma may consist of land designated from any one or more of their first three allotment selections taken under the Act of Congress approved June twenty-eighth, nineteen hundred and six, entitled, 'An Act for the division of the lands and funds of the Osage Indians in Oklahoma Territory, and for other pur-
224 poses,' the designation thereof to be subject to approval by the Secretary of the Interior."

By Sec. 6 of an Act of Congress of April 15, 1912, (Stat. at L. —), it is provided:

"That from and after the approval of this act the lands of deceased Osage Allottees, unless the heirs agree to partition the same, may be partitioned or sold upon proper order of any court of competent jurisdiction in accordance with the laws of the State of Oklahoma: Provided, That no partition or sale of the restricted lands of a deceased Osage allottee shall be valid until approved by the Secretary of the Interior. Where some of the heirs are minors, the said Court shall appoint a guardian ad litem for said minors in the matter of said partition, and partition of said land shall be valid when approved by the court and the Secretary of the Interior. When the heirs of such deceased allottees have certificates of competency, or

are not members of the tribe, the restrictions on alienation are hereby removed. If some of the heirs are competent and others have not certificates of competency, the proceeds of such part of the sale as the competent heirs shall be entitled to shall be paid to them without the intervention of an administrator. The shares due minor heirs, including such minor Indian heirs as may not be tribal members and those Indian heirs not having certificates of competency, shall be paid into the Treasury of the United States and placed to the credit of the Indians upon the same conditions as attach to segregated shares of the Osage national fund, or with the approval of the Secretary of the Interior paid to the duly appointed guardian. The same disposition as herein provided for with reference to the proceeds of inherited lands sold shall be made of the money in the Treasury of the United States to the credit of deceased Osage allottees."

It is contended by plaintiff in error that the lands involved constitute the homestead and surplus allotments of a deceased member of the Osage Tribe, and by virtue of the foregoing congressional enactments are alienable only upon issuance of certificates of competency to the heirs.

Defendant in error insists that no restrictions upon alienation of the lands in question by the heirs of decedent ever existed, for the reason that such lands were not selected, nor a homestead therein designated, by the deceased member of the tribe in her lifetime, but that such selection was made in her right and deeds therefor executed in her name after her death, and therefore such lands are neither homestead nor surplus, but constitute a separate and distinct class of allotment upon the alienation of which no restrictions were imposed by Congress.

As sustaining his contention, plaintiff in error relies upon United States vs. Aaron, 183" Fed. 347, affirmed by the Circuit Court of Appeals, 8" Circuit, in Aaron vs. United States, 204 Federal, 943, wherein it was held:

1. Lands of full-blood Osage Indian allottees selected by and alloted to them before their decease were inalienable by their full-blood heirs in March, 1909, under the Act of June 28, 1906, c. 3572, 34 Stat. 539, 541, 542, where none of them had obtained certificates of competency.

"2. The homestead lands of such allottees were likewise inalienable by such heirs.

"The fourth paragraph of section 2, of the Act of June 28, 1906, c. 3572, 34 Stat. 541, provided that the homestead lands of Osage Indian allottees 'shall be inalienable and nontaxable until otherwise provided by Act of Congress.' The seventh paragraph of the same section declared that the Secretary might issue to any member of the Osage Tribe a certificate of competency, authorizing him to deed his lands, 'except his homestead, which shall remain inalienable and non taxable for a period of twenty-five years, or during the life of the allottee."

The opinions in the case relied upon are not decisive of the question here presented, for the reason that the same was not involved

or determined therein as shown by the language employed in the latter opinion, namely:

"But counsel for the appellants contend that no restriction upon alienation was ever imposed upon the lands here in question, because they were not selected by Cena June, nor did she designate her homestead therein and thus divide them into homestead lands and surplus lands, nor were they allotted to her before her decease, but they were selected and allotted to her heir after her decease, so that they constitute a different class of lands from either the homstead lands or the surplus lands, and are thus exempt from all restrictions upon their alienation under the decisions in Mullen v. United States, 224 U. S. 448, 452, 457, 32 Sup. Ct. 494, 56 L. Ed. 834, and Hancock v. Mutual Trust Company, 24 Okl. 391, 103 Pac. 566. A
227 careful examination of the record, however, has satisfied us that the defendants are conclusively estopped from making this claim. The complainant alleged in its bill that a described part of the lands here in controversy was allotted to Cena June 'as the homestead of said Cena June, duly selected as and for such homestead,' and that a described portion of them was allotted to the said Cena June 'as her surplus lands.' The agreed statement of facts, upon which the case was heard and the decree was founded, contained a stipulation that under the Act of June 28, 1906, 'Cena June, who was a duly enrolled member of the Osage tribe of Indians in Oklahoma, received as her homestead allotment the lands described and set forth as her homestead allotment in paragraph two of the amended bill,' and '* * * that said Cena June was duly allotted as a member of said tribe as the lands set forth as her surplus selection in the amended bill herein.' Consequently, it is too late now for the appellants to claim that the selections, the designation of the homestead, and the allotments were not made until after the death of Cena June. * * *"

In Levindale Lead & Zinc Mining Co. v. Coleman, supra, it is said:

"Taken in their natural sense, the provisions of the fourth paragraph of #2 apply only to allotments made to members of the tribe. There is nothing to suggest that a nonmember should designate a 'homestead', and unless lands were thus segregated the restrictions as to 'homesteads' would not apply. With respect to 'surplus lands', it will be observed that it is only selections
228 of each 'member', and the share of remaining lands 'allotted to the member', which constitute lands so described and thus come under the stated restrictions. It was early ruled administratively that under #6 the right to the member's share, though unallotted in his lifetime, passed to his legal heirs as there defined, and this we assume to be the meaning of the statute. But the fact that the nonmember takes in the right of the deceased member is not enough to subject him to restrictions which are plainly imposed for the protection of members. It is urged that the restrictions, by virtue of their terms, were to run with the land until they expired by limitation or were removed (Bowling v. United States, 233 U. S. 528, 58 L. Ed. 1080, 34 Sup. Ct. Rep. 659), but restrictions

would not run with the land unless they had attached. And, even where they had attached, they would run only according to the intendment of the statute. We find no indication of an intent that they should apply to lands, or an interest in ownership of white men who were nonmembers of the tribe. Emphasis is placed by the defendant in error on the provisions of #7 as to leases; but it would be an inadmissible construction of this section to say that the word 'heirs' was there used in contradistinction to 'members'. This provision as to leases, in the light of the purpose of the Act, had reference, we think, to the 'individual members' who received allotments and the Indian heirs of such members.

229 "The view we have taken of the inapplicability of the restrictions upon alienation in a case like the present finds support in the fact that there was no provision for giving to nonmembers certificates of competency. Under the seventh paragraph of #2, any 'adult member' of the tribe, although a full-blood Indian, who could satisfy the Secretary of the Interior of his ability to transact his own business, might obtain a certificate and thus be enabled to dispose of his 'surplus land'; but a competent white man, not a member, could not be relieved. It would seem to be evident that such an incongruous result was not intended, the language plainly showing that Indians alone were deemed to be subjected to the restrictions.

"It would seem that the only restrictions placed upon alienation of the allotted lands of the Osage Tribe are found in the fourth paragraph of section two of the Act of June 28, 1906, supra, and 'apply only to allotments made to members of the tribe.' "

The general scheme for division of the Osage lands was similar to that adopted for the distribution of those of the Five Civilized Tribes, contemplating primarily, their allotment to living members of the tribe, separating the homestead and surplus and providing certain restrictions upon alienation and exemption from taxation obviously for the better protection of the allottee in the quiet enjoyment thereof; but anticipating that such character of allotments would become impossible in the event of the death of members entitled thereto, Congress provided in such contingency for allotments going immediately to heirs, in the right of such deceased members, of the shares of the tribal property to which they would have been entitled to receive had they survived. As to the latter class of allotments no

230 provision was made for the segregation of the homestead and surplus, and no occasion for such separation existed, as each of said heirs, if a member of the tribe, was provided with a homestead fully protected in his own right.

In neither the Osage Division Act nor the Allotment Act relating to the Five Civilized Tribes (save perhaps in one instance), was there a distinction made between heirs; they might or might not be members of the tribe, but each would take his undivided share under the particular Act in the same manner and with the same powers of disposition, unless otherwise expressly provided.

In Mullen v. United States, 224 U. S. 448, 32 Sup. Ct. 494, 56 L.

Ed. 834, involving the Choctaw and Chickasaw Allotment Acts, it is said:

"It is true that under the Creek agreement, in cases where the ancestor died before allotment, the lands were to be allotted directly to the heirs, while under the Choctaw and Chickasaw agreement the allotment was to be made in the name of the deceased member, and 'descend to his heirs.' This, however, is merely formal distinction and implies no difference in substance. In both cases the lands were to go immediately to the heirs, and the mere circumstance that, under the language of the statute, the allotment was to be made in the name of the deceased ancestor instead of the names of the heirs furnished no reason for implying a requirement that there should be a designation of a portion of the lands as homestead.

231 We have, then, a case where all the allotted lands going to the heirs are of the same character, and there is no restriction upon the right of alienation expressed in the statute. Had the lands been allotted in the lifetime of the ancestor, one-half of them, constituting homestead, would have been free from restrictions upon his death. The only difficulty springs from the language of paragraph 16, limiting the right of heirs to sell 'surplus' lands. But, on examining the context, it appears that this provision is part of the scheme for *allotments to living members, where there is a segregation of homestead and surplus lands respectively.* Whatever the policy of such a distinction which gives a greater freedom for the disposition by heirs of homestead lands than of the additional lands, there is no warrant for importing it into paragraph 22, where there is no such segregation. It would be manifestly inappropriate to imply the restriction in such cases so as to make is applicable to all the lands taken by the heirs, and there is no occasion or authority for creating a division of the lands so as to impose a restriction upon a part of them. (Italics ours.)

"There being no restriction upon the right of alienation, the heirs in the case involved in this appeal were entitled to make the conveyances. The bill alleged that the tracts embraced in these conveyances were 'allotted lands,' and certificates of allotment had been issued. These Indian heirs were vested with an interest in the property which, in the absence of any provision to the contrary, was subject of sale. The fact that they were 'full-blood

232 Indians makes no difference in this case, for, at the time of the conveyance in question, heirs of the full-blood, taking under the provisions of paragraph 22 of the supplemental agreement, had the same right of alienation as other heirs."

In the Mullen case, supra, the Supreme Court of the United States further says:

"While the lands were to be allotted in the name of the deceased they passed at once to his heirs, and as each heir, if a member of the tribe, was already supplied with his homestead of 160 acres, there was no occasion for a further selection for that purpose from the inherited lands. No distinction is made between the heirs; they might or might not be members of the tribe and where there were a number of heirs, each would take his undivided share. It is quite

evident that there is no basis for implying the requirement that in such case there should be a selection of portion of the allotment as a homestead, and all the lands allotted under paragraph 22 are plainly upon the same footing. While it appear- from the record that, in the present case, separate certificates of allotment were issued for homestead and surplus lands, this was without the sanction of the statute."

In Skelton vs. Dill, 235, U. S. 206, 59 L. Ed. 198, construing the Allotment Acts of the Creek Tribe it is said:

"Evidently anticipating that participation in the allotment and distribution might in some instances be cut off by death, Congress made provisions for such a contingency. * * *

"Whether these restrictions were intended to apply only
233 to allotments made to living citizens in their own right, or to apply as well to allotments made on behalf of deceased members, is the question for decision. The Supreme Court of the State, when passing upon this case, held them applicable to both classes of allotments, but in the later case of Rentie v. McCoy, 35 Okla. 77, 128 Pac. 244, reached the other conclusion, as did also the district court for the eastern district of Oklahoma in Reed v. Welty, 197 Fed. 419. We think the better reasoning lies with the view that the restrictions apply only to allotments made to living citizens in their own right. Not only do the provisions of #16 of the supplemental act lend themselves to that view, but in those sections of both acts which deal with allotments on behalf of deceased persons there is no suggestion of a restriction upon alienation. This difference in legislative treatment doubtless was deliberate, and reflects a corresponding difference in purpose. In Mullen v. United States, 224 U. S. 448, 56 L. Ed. 834, 32 Sup. Ct. Rep. 494, a like question arose under the original and supplemental acts relating to the Choctaw and Chickasaw lands, and we held that the restrictions upon alienation imposed by those acts were applicable to allotments to living members in their own right, but not to allotments on behalf of members then deceased. We do not perceive anything in the acts relating to the Creek Lands which calls for a different conclusion. * * *"

We hold that the Act of June 28, 1906, placed no restrictions upon alienation by heirs of inherited lands allotted and deeded in the right of a member of the Osage tribe after his death, save only the interest in the minerals, reserved to the tribe, the individual disposition of which is expressly inhibited.

234 The evident purpose of the Act of April 15, 1912, supra, was not to impose restrictions upon alienation of Osage Lands, but to authorize the conveyance of such of said lands to which restrictions had attached by reason of their allotment to living members of the tribe who had subsequently died, leaving surviving them Indian heirs, members of the tribe, to whom certificates of competency were issued.

In Levindale Lead & Zinc Mining Co. vs. Coleman, it was said: "* * * But it is the Act of 1912 upon which chief reliance is placed. This was 'Supplementary to and amendatory of' the Act

of 1906, and provides, among other things, in #6, relating to the lands 'of deceased Osage allottees,' that 'when the heirs of such deceased allottees have certificates of competency or are not members of the tribe, the restrictions on alienation are hereby removed. We lay aside the suggestion that 'deceased Osage allottees' may be taken to mean only members who received allotments in their own right while living, expressing no opinion upon that point. For not only is a legislative declaration of the intent of a previous act not absolutely controlling, but we think that in the present instance the purpose of Congress is manifest. This suit had been decided in the district court of the State in December, 1910, and it had been there held that the restriction applied to nonmembers. The case had been appealed, but it may well be supposed that Congress intended to remove the restriction upon a nonmember, if such a restriction could be deemed to exist. That, we are satisfied,
235 was the object of the provision, and it was not an attempt to import into the earlier Act a restriction which lay wholly outside its express terms and the policy of guardianship it was intended to execute.

We conclude that the district court of Osage County had jurisdiction to partition the lands involved, and that its judgment was conclusive of the rights of the parties in this proceeding to share equally in the disposition of the lands in question.

In view of this conclusion it is unnecessary to determine the very interesting question presented by the briefs relative to the capacity in which the district court of Osage County would have acted and the conclusiveness of this judgment in the event it had been held that the lands in question were restricted lands such as contemplated by the Act of April 15, 1912, supra.

It follows that the judgment of the court below should be affirmed.

236 Filed in Supreme Court of Oklahoma Jan. 16, 1917. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 7708.

JOHN KENNY, Plaintiff in Error.

v.

LABAN MILES et al., Defendants in Error.

Petition for Re-hearing by Plaintiff in Error.

Comes now the plaintiff in error, and for re-hearing in the above-entitled cause and a re-hearing on and reversal of the decision of the Honorable Supreme Court Commission, and approval thereof by this Honorable Court, affirming the judgment rendered in the court below, alleges and relies upon the grounds following:

This was a contest relative to the estate of a full-blood Osage allottee woman named "Lah-tah-sah," Osage Allottee No. 256, who died in Osage County, where she had been allotted lands, without receiving a certificate of competency or having her restrictions removed. Plaintiff in error, her only son, who was also a non-competent Osage Indian, survived her, and is her only heir-at-law, unless the defendant, Laban Miles, who is also a non-competent Osage, was the husband of the deceased, which is disputed; and this is an appeal from the District Court of Osage County, distributing lands and adjudging Laban Miles an heir, in an appeal from the County Court involving its probate jurisdiction.

Before the order of distribution complained of, Laban Miles brought, in the District Court of Osage County, Oklahoma,
237 an action against John Kenny (the plaintiff in error), and therein, on April 25, 1913, recovered judgment against Kenny for a partition of the lands allotted to Lah-tah-sah, on the theory that he was the husband and heir of Lah-tah-sah and entitled to one-half of her estate.

The petition filed by Laban Miles for this judgment in partition in the District Court of Osage County alleged (Plaintiff in error's brief, page 17—Record page 68):

"1. That said plaintiff and the said defendant are the sole heirs of Lah-tah-sah, Osage Allottee No. 256, deceased. That by a deed dated September 28, 1908, recorded Mar. 2, 1909, in Book 1 of Homestead Deeds, page 247, in the office of the Register of Deeds for Osage County, Oklahoma, there was conveyed to Lah-tah-sah the following tract of land in Osage County, Oklahoma, to-wit:

N. W. ¼ of Section 26, Township 24 North, Range 4 East of the Indian Meridian, containing 160 acres.

"That by a deed dated May 15, 1909, recorded August 10, 1909, in Book 1 of Allotment Deeds, page 282, in the office of the Register of Deeds for Osage County, Oklahoma, there was conveyed to Lah-tah-sah the following tracts of land in Osage County, Oklahoma, to-wit:

"N. E. ¼ of Section 30, Township 28, Range 9; S. E. ¼ of Section 30, Township 28, Range 9; Lot 3, E. ½ of S. W. ¼ of N. W. ¼, S. E. ¼ of N. W. ¼, N. ½ of S. E. ¼ of Section 4, Township 20, Range 10, all North and East of the Indian Base and Meridian, containing 500.12 acres, more or less."

Upon the trial of such partition action, and in the judgment rendered therein, the court found as a conclusion of law, that Lah-tah-sah, Osage Allottee No. 256, died intestate, on or about the 19th day of August, 1908, leaving an estate, consisting in part of the lands described in plaintiff's petition—that is, in the petition of Laban Miles for partition (Plaintiff in error's brief, page 22—Record page 76). This judgment will be referred to as a "partition judgment."

The proceeding in the instant case is not the "partition proceeding," but is a different proceeding, originating in the probate jurisdiction of the County Court of Osage County, instituted by the de-

fendant in error, Laban Miles, who, in July, 1912, petitioned
238 for the appointment of John Bird as administrator of such estate, and in such petition, referring to the estate of Lah-tah-sah, deceased, recited:

"The general character and probable value of the estate left by decedent, is as follows:

"Lands allotted to her as a member of the Osage Tribe of Indians, in Osage County, Oklahoma, amounting to about 660 acres, of the approximate yearly rental value of $500.00, and Tribal Trust Funds belonging to her as a member of such Tribe, and to her credit in the Treasury of the United States, together with oil, gas and other mineral annuities, of the approximate yearly income of $600.00" (Record page 3).

That in pursuance of this petition, letters of administration were issued to John Bird upon such estate, and the appraisers returned as real estate belonging to Lah-tah-sah, the same lands in controversy here (Record page 9).

In the course of this administration, when John Kenny (plaintiff in error) objected to the claim of Laban Miles to be an heir of Lah-tah-sah, deceased, to these lands, Laban Miles files his Plea of Res Adjudicata, setting up therein and offering in support thereof, the petition and judgment in partition hereinbefore referred to, rendered in the District Court of Osage County, in 1913; and we allege and submit that in such administration proceeding upon the estate of the said Lah-tah-sah, deceased, and with respect to such lands as a part of her estate, and upon the recital in the petition for letters of administration by the defendant in error that these lands had been allotted to Lah-tah-sah as a member of the Osage Tribe of Indians, and the findings of fact in the partition judgment, which was a part of the Plea of Res Adjudicata, that Osage Allottee No. 256 died intestate on or about the 19th day of August, 1908, leaving an estate consisting in part of the lands described in plaintiff's petition, and the fact that she was given an allotment number, all show that the said Lah-tah-sah was allotted before her death, and
239 that the defendant in error is estopped by this proceeding by him instituted, to deny that she was allotted before her death, and that the judgment pleaded as res adjudicata shows that these lands were the estate of the said Lah-tah-sah at the time of her death; that the said question is decisive of said case, and, duly submitted by counsel, has been overlooked by the court, and that on account of the fact that Lah-tah-sah was allotted said lands in her lifetime, the Honorable Commission was in error in finding, and this Honorable Court in approving, "that after her death, the lands involved were selected in her right and deeds therefor, approved by the Secretary of the Interior, were executed in her name as grantee and recorded," and in affirming the judgment appealed from.

The lands were allotted to Lah-tah-sah and she was given an allotment number prior to her death, and if the County Court of Osage County, or any other court in this proceeding, has jurisdiction to render any judgment with respect to these lands, it must be upon

the theory that they are of the estate of Lah-tah-sah, deceased, and the lands of her as a deceased Osage allottee.

That the Honorable Commission and Court decided this case upon an erroneous conclusion and finding of law, and the Honorable Commission and Court overlooked the fact aforesaid, which is decisive of this case, and erred in finding that these lands were not selected or allotted until after the death of Lah-tah-sah, and in finding that they were not the lands of the deceased Osage allottee, and in affirming said judgment.

Plaintiff in error alleges that the case of Aaron v. United States, 204 Fed. 943, 123 C. C. A. 265, is an authority decisive of this case, and in which it was held by the United States Circuit Court of Appeals that lands allotted to one Cena June, an Osage woman, before her death, but not conveyed to her or the heirs by deed until after her death, were restricted lands; that the purchaser in that
240 case, by his pleading and stipulation that such lands were allotted to Cena June, was estopped to deny that fact; that it was too late for the appellant to claim that the selection, the designation of the homestead, and the allotment, were not made until after the death of Cena June; that the court below did not hear or decide the case upon that theory; that *that* the appellate court could not; that "the fact that the deeds of these allotments were subsequently made to the heirs of Cena June, after her decease, is immaterial; when the allotments have been made the equitable title, the right to legal title, and the entire beneficial interest in the land, subject to the restriction upon alienation imposed upon them by the Act of Congress at the time they were allotted, vested in the allottee, and the title to these allotments, under the subsequent deeds, to her heirs, related back to and took effect at the time of the allotments. There is therefore no escape from the conclusion that the title of the heirs to the homestead land and the surplus lands of this allottee were subject to the respective restrictions imposed upon those classes of land by the Act of June 28, 1906."

That in this proceeding, in the instant case, originating in the probate jurisdiction of the County Court of Osage County, Oklahoma, these lands, at the instance of defendant in error, were brought upon the record, under the jurisdiction of such court, as the allotment of the decedent; that it was essential to the jurisdiction of such County Court, and of the District Court on appeal, that the title to these lands, either equitable or legal, has vested in the decedent; that if they were not the allotment of the decedent, the County Court, and the District Court on appeal, were without jurisdiction to render the judgment distributing any interest therein to the defendant in error, and defendant in error, while claiming the benefit of that jurisdiction, is estopped to deny the fact upon which such jurisdiction depends—that they are the lands of this deceased Osage allottee; and if they are not such lands, within the meaning
241 of the Act of Congress of April 15, 1912, requiring the approval of the Secretary of the Interior to their partition, as contended by plaintiff in error, then the County Court of Osage County, in the instant case, and the District Court of that County on

appeal, were without jurisdiction, and the judgment should not be affirmed.

And if they are the lands of such deceased Osage allottee, such allottee having died without receiving a certificate of competency, and the said John Kenny and Laban Miles both being full-blood Osage Indians without certificates of competency, then the plea of res adjudicata, the judgment upon which it rests not being approved by the Honorable Secretary of the Interior, is without effect, and the lands involved being restricted, the judgment of the lower court should be reversed; that to allow that these are the lands of Lah-tah-sah, deceased, to give the probate jurisdiction of the subject-matter, and to deny that fact to avoid the restrictions and limitations of the Act of April 15, 1912, is a contradiction which this Court should not permit to stand.

That the Honorable Commission and Court overlooked the following controlling decisions and express statutes, which were duly called to the attention of the Court, and which decisions and express statutes are decisive of this case:

Section One (1), of the Act of June 28, 1906 (34 Stat. L. 539) is as follows:

"That the roll of the Osage tribe of Indians, as shown by the records of the United States in the office of the United States Indian agent at the Osage Agency, Oklahoma Territory, as it existed on the first day of January, nineteen hundred and six, and all children born between January first, nineteen hundred and six, and July first, nineteen hundred and seven, to persons whose names are on said roll on January first, nineteen hundred and six, and all children whose names are not now on said roll, but who were born to members of the tribe whose names were on the said roll on January first, nineteen hundred and six, including the children of members of the tribe who have, or have had, white husbands, is hereby declared to be the roll of said tribe and to constitute the legal membership thereof; Provided, That the principal chief of the Osages shall, within three months from and after the approval of this Act, file with the Secretary of the Interior a list of the names which the tribe claims were placed upon the roll by fraud, but no name shall be included in said list of any person or his descendants that was placed on said
242 roll prior to the thirty-first day of December, eighteen hundred and eighty-one, the date of the adoption of the Osage constitution, and the Secretary of the Interior, as early as practicable, shall carefully investigate such cases and shall determine which of said persons, if any, are entitled to enrollment; but the tribe must affirmatively show what names have been placed upon said roll by fraud; but where the rights of persons to enrollment to the Osage roll have been investigated by the Interior Department and it has been determined by the Secretary of the Interior that such persons were entitled to enrollment, their names shall not be stricken from the roll for fraud except upon newly discovered evidence; and the Secretary of the Interior shall have authority to place on the Osage roll the names of all persons found by him, after investigation, to be so entitled, whose applications were pending on the date of the approval of this Act; and the Secretary of the Interior is hereby author-

ized to strike from the said roll the names of persons or their descendants which he finds were placed thereon by or through fraud, and the said roll as above provided, after the revision and approval of the Secretary of the Interior, as herein provided, shall constitute the approved roll of said tribe; and the action of the Secretary of the Interior in the revision of the roll as herein provided shall be final, and the provisions of the Act of Congress of August fifteenth, eighteen hundred and ninety-four, Twenty-eighth Statutes at Large, page three hundred and five, granting persons of Indian blood who have been denied allotments the right to appeal to the courts, are hereby repealed as far as the same relate to the Osage Indians; and the tribal lands and tribal funds of said tribe shall be equally divided among the members of said tribe as hereinafter provided."

That the above express provisions and the other provisions of said Act provide for the settlement of a roll of the members of said Tribe as of January 1, 1906, and that all persons, including the decedent in this case, whose names were on that roll, were, under this law, members of the Tribe and entitled to allotments, and that their share of the tribal properties became fixed as of January 1, 1906, and thenceforward such member held such interest in her individual capacity and not as a member of the community, subject only to proper identification of the grant; and the death of such member did not destroy her interest, but it descended to her heirs; and that all heirs, members of such Tribe, took such lands subject to the restrictions; that the characterization of such lands as "surplus" and "homestead" is applicable to all such lands as classification thereof, whether inherited lands or lands allotted immediately to the member.

243 That whether this last conclusion be correct or not, the allotments in this instant case, being made to Lah-tah-sah before her death, were subject to such restrictions and are the lands of the deceased Osage allottee, within the meaning of the Act of April, 1912.

That the Honorable Commission and Court overlooked the following statute, decisive of this said case:

The Act of March 3, 1909 (35 Stat. L. 778), which is as follows:

"That the Secretary of the Interior be, and he hereby is, authorized and empowered, upon application, to sell, under such rules and regulations as he may prescribe, part or all of the surplus lands of any member of the Kaw or Kansas and Osage tribes of Indians in Oklahoma: Provided, That the sales of the Osage lands shall be subject to the reserved rights of the tribe in oil, gas, and other minerals."

That such statute, prescribing the manner in which such lands might be sold, impliedly prohibits their sale in any other manner. Stephens v. Smith, 10 Wall. 321, 19 Law Edition, 933.

That the Honorable Commission and Court overlooked the following decisions, decisive of the said case, which were duly submitted:

Goodrum v. Buffalo, 162 Fed., 817;
McKay v. Kalyton, 204 U. S. 458;
U. S. v. Richert, 188 U. S. 432;
U. S. ex rel. West v. Hitchcock, 205 U. S. 80;
Libby v. Clark, 118 U. S. 250.

The decision of the Honorable Commission, affirming the judgment below, is based upon erroneous deductions of fact and erroneous conclusions of law; that such decision is further erroneous for the reason that it is upon the theory that the lands involved were not allotted to the said Lah-tah-sah, when the case was tried and decided in the county and district courts, and all the proceedings below in the case are, upon the theory that the lands involved belonged to and were a part of the estate of the decedent and were the allotments of the decedent as a member of the Osage Tribe of Indians; and plaintiff is not entitled to change the theory of the case after the case reached this court.

244 Plaintiff in error alleges and claims that under an Act entitled "An Act Supplementary to and Amendatory of the Act Entitled 'An Act for the Division of the Lands and Funds of the Osage Nation of Indians in Oklahoma', approved June 28, 1906, and for other purposes", approved April 18, 1912, being Sections 1 to 11 inclusive (37 Stat. L. 86-88), and particularly under Section 6 of such Act, providing "that from and after the approval of this Act, the lands of deceased Osage allottees, unless the heirs agree to partition the same, may be partitioned or sold upon proper order of any court of competent jurisdiction in accordance with the laws of the State of Oklahoma: Provided, That no partition or sale of the restricted lands of deceased Osage allottees shall be valid until approved by the Secretary of the Interior", this plaintiff in error is not bound by the said judgment pleaded as res adjudicata until the same is approved by the Honorable Secretary of the Interior, nor by the judgment in the instant case based thereon, until the same is approved by the Honorable Secretary of the Interior, and that this suit draws in question the validity of such statute of the United States, and of the authority exercised thereunder, or to be exercised thereunder, by the Honorable Secretary of the Interior; and to affirm said judgment will deprive this plaintiff in error of the protection of said statute and of the authorty exercised thereunder by the United States and by the Honorable Secretary of the Interior; and that the said proceeding is repugnant to the Constitution and laws of the United States and is not binding upon this plaintiff in error.

And, further, that this said suit draws in question the validity of the Statutes of Oklahoma relating to the procedure of the county and district courts, and the authority of the county and district courts of Osage County, exercised under the laws of the State, and that the authority so exercised and the decision that said judgment

245 pleaded as res adjudicata is res adjudicata of the issues involved in the instant case, is repugnant to the Constitution, treaties and laws of the United States, and particularly is repugnant to Section 6 of the above-entitled Act of April 18, 1912; and that under said Act of April 18, 1912 the said judgment of the District Court of Osage County, Oklahoma, partitioning said lands, and which has not been approved by the Honorable Secretary of the Interior, is null and void; it has no validity, and to enforce the same against this plaintiff in error, as was done in the trial of the instant case in the court below, denies this plaintiff in error the protection of

the Constitution and laws of the United States and of the treaties made with the Osage Indian Nation, and particularly of the protection given this plaintiff in error under and by virtue of said above-entitled Act of April 18, 1912.

Wherefore, for all the errors and irregularities aforesaid, this plaintiff in error prays that he be given a rehearing in the above-entitled cause, that the decision of affirmance be set aside, and that said cause be heard again, and that the judgment appealed from and complained of be reversed.

Dated this 15th day of January, 1917.

E. R. HASTINGS,
EMBRY, CROCKETT & JOHNSON,
JOHN EMBRY,
Attorneys for Plaintiff in Error.

246 And thereafter, to-wit, on January 30th 1917, in the Supreme Court of the State of Oklahoma, the following proceedings were had, in said cause:

Supreme Court, January Term, 1917, January 30th, 1917, Twelfth Judicial Day.

7708.

JOHN KENNY, Plaintiff in Error,

vs.

LABAN MILES et al., Defendants in Error.

And now on this day it is ordered by the court that the petition for rehearing filed in the above cause be, and the same is hereby denied.

247 And thereafter, to-wit, on February 14th 1917, in the Supreme Court of the State of Oklahoma, the following proceedings were had, to-wit:

In the Supreme Court of the State of Oklahoma.

7708.

JOHN KENNY, Plaintiff in Error,

vs.

LABAN MILES et al., Defendants in Error.

And now on this Feb. 14 1917, it is ordered by the court that the mandate of this court in the above cause be recalled, and stayed pend-

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ng consideration and decision of application for leave to file second etition for rehearing.

48 In the Supreme Court of the State of Oklahoma.

Certificate of Clerk.

I, William M. Franklin, Clerk of the Supreme Court of the State f Oklahoma, do hereby certify that the foregoing 247 pages, num-ered from 1 to 247, both inclusive, are a full, true and complete ranscript of the record and all proceedings in said Supreme Court n cause Number 7708, John Kenny, Plaintiff in error, versus Leban Miles and John L. Bird, Administrator of the Es-ate of Lah-tah-sah, Osage Allottee No. 256, deceased, Defendants in error.

In Witness Whereof, I hereto set my hand and affix the seal of said Supreme Court, at Oklahoma City, Oklahoma, this 12th day of April, 1917.

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk Supreme Court of Oklahoma,
By G. C. STONE, *Deputy.*

CLOSE IN CENTER

248a UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Oklahoma, Greeting:

Being informed that there is now pending before you a suit in which John Kenny is plaintiff in error, and Laban Miles and John L. Bird, Administrator of The Estate of Lah-Tah-Sah, deceased, are defendants in error, No. 7708, which suit was removed into the said Supreme Court by virtue of a writ of error to the District Court of Osage County, State of Oklahoma, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed
248b into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-fourth day of May, in the year of our Lord one thousand nine hundred and seventeen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Filed Jun- 26, 1917. William M. Franklin, Clerk.

[Endorsed:] File No. 25,923. Supreme Court of the United States, No. 1093, October Term, 1915. John Kenny vs. Laban Miles et al., etc. Writ of Certiorari.

248c In the Supreme Court of the State of Oklahoma.

No. 7708.

JOHN KENNY, Plaintiff in Error,

v.

LABAN MILES and JOHN L. BIRD, Administrator of the Estate of Lah-tah-sah, Osage Allottee No. 256, Deceased, Defendants in Error.

I, William M. Franklin, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the transcript of record hereto attached is a full true and complete transcript of the record and of all proceedings in the Supreme Court of the State of Oklahoma in cause Number 7708, John Kenny, Plaintiff in error, versus Laban Miles, and John L. Bird, Administrator of the estate of Lah-tah-sah, Osage Allottee No. 256, deceased, in said court, and the same is re-

turned herewith; and in pursuance of the command of the foregoing writ of certiorari I now hereby certify that on the 26th day of June, 1917, there was filed in my office a stipulation in the above entitled case in the following words to-wit:

"In the Supreme Court of the State of Oklahoma.

No. 7708.

JOHN KENNY, Plaintiff in Error,

v.

LABAN MILES and JOHN L. BIRD, Administrator of the Estate of Lah-tah-sah, Osage Allottee No. 256, Deceased, Defendants in Error.

Stipulation.

It is hereby stipulated that the transcript of record in the above entitled case already filed in the Clerk's office of the Supreme Court of the United States, with the petition for writ of certiorari,
248*d* and certified transcript of the motion of defendants in error in the Supreme Court of the State of Oklahoma to dismiss the appeal and of the response of plaintiff in error thereto, and of defendants in error's response to petition for rehearing, and of the application of plaintiff in error for leave to file a second petition for rehearing in the Supreme Court of the State of Oklahoma and of the response of defendants in error thereto, and of the order of the Supreme Court of the State of Oklahoma denying said application for leave to file a second petition for rehearing and correcting a date in said opinion, and of said opinion as finally corrected, be taken as a return to said writ of certiorari.

Witness our hands this 13th day of June, 1917.

ELMER L. FULTON,
JOHN EMBRY,
Attorneys and Counsel for John Kenny, Plaintiff in Error.
H. P. WHITE,
Attorney for Counsel for Laban Miles, Defendant in Error."

I further certify and return that the above is a true and correct copy of said stipulation and the whole thereof, and that the transcript of record returned herewith is a full, true and complete transcript of record in the above entitled case as shown by the record of this office, and is the same as the transcript filed in the clerk's office of the Supreme Court of the United States with the petition for Writ of certiorari, with the additions thereto as mentioned in and required by said stipulation.

In witness whereof I, hereto set my hand and affix the seal of said Supreme Court, at Oklahoma City, Oklahoma, this 3rd day of July, 1917.

[Seal Supreme Court, State of Oklahoma.]

WILLIAM M. FRANKLIN,
Clerk of Supreme Court of Oklahoma,
By NEAL ORR, *Deputy.*

248½ In the Supreme Court of the State of Oklahoma.

Filed Dec. 7, 1915. William M. Franklin, Clerk.

No. 7708.

JOHN KENNY, Plaintiff in Error,

vs.

LABAN MILES and JOHN L. BIRD, Administrator of the Estate of Lah-tah-sah, Osage Allottee #256, Deceased, Def'ts in Error.

Notice of Motion to Dismiss.

To John Kenny, Plaintiff in Error, and to John Embry, E. R. Hastings, and to Paul Van Winkle, his Attorneys of Record:

You and each of you will take notice that defendant in error, Laban Miles, will on the 7th day of December, 1915, file a motion to dismiss the appeal in the above entitled cause, a copy of said motion and of all the exhibits thereto attached is tendered herewith, this 7th day of December, 1915.

H. P. WHITE,
Attorney for Defendant in Error,
Laban Miles.

Service of the within and foregoing notice of Motion to Dismiss, and the receipt of a carbon copy thereof, and the receipt of a carbon copy said Motion to Dismiss with copies of all the exhibits thereto attached, is hereby acknowledged this the 7th day of December, 1915.

E. R. HASTING,
PAUL VAN WINKLE,
JOHN EMBRY,
Attorneys for John Kenny,
Plaintiff in Error.

249 In the Supreme Court of the State of Oklahoma.

No. —.

JOHN KINNY, Plaintiff in Error,

vs.

LABAN MILES and JOHN L. BIRD, Administrator of the Estate of Lah-tah-sah, Osage Allottee #256, Deceased, Defendants in Error.

Motion to Dismiss Appeal.

Comes now Laban Miles, one of the defendants in error in the above entitled cause, and moves the Court to dismiss the above entitled cause and the attempted appeal, by John Kinny, plaintiff in error, for want of jurisdiction, and for grounds of motion, states

First. That the administrator of the estate of Lah-tah-sah, Osage allottee No. 256, deceased, is a necessary party but has not been made a party.

Second. That said John L. Bird was discharged by the county court of Osage County, Oklahoma, as administrator of the estate of said Lah-tah-sah, Osage Allottee, No. 256, deceased, on the 20th day of May, 1915, and one W. O. Dildine was, on the 20th day of May, 1915, duly appointed and qualified as the administrator of said estate of said Lah-tah-sah, deceased, to succeed the said John L. Bird, as such administrator, and has not been made a party to this appeal.

Third. That the case-made was not served on W. O. Dildine, administrator of the estate of said Lah-tah-sah, deceased, nor on John L. Bird, former administrator, nor on their attorneys, or any
250 of them, and service of said case-made was not waived by said W. O. Dildine, administrator, nor by said John L. Bird, former administrator, nor by their attorneys, nor by any of them.

Fourth. That no notice of time and place to settle and sign said case-made was ever served on W. O. Dildine, administrator of the estate of the said Lah-tah-sah, deceased, nor on John L. Bird, former administrator of said estate, nor on their attorneys or any of them, nor was such notice waived by said W. O. Dildine, administrator, nor by said John L. Bird, former administrator, nor by their attorneys, or any of them.

Fifth. That neither said W. O. Dildine, administrator of the estate of said Lah-tah-sah, deceased, nor said John L. Bird, former administrator of the estate of said Lah-tah-sah, deceased, appeared in person, or by attorney, and neither were present in person or by attorney, at the time of settling and signing the case-made, and only the said John Kinny and the said Laban Miles appeared, or were present or represented at the time of settling and signing said case-made as fully appears by the certificate of the trial judge. (Record, page 129.)

That an appeal was taken by said John Kinny from the county court of Osage County, Oklahoma, to the District court of Osage County, Oklahoma, from the judgment rendered by the county court of Osage county, Oklahoma, on the hearing of the final account of said administrator, part of which judgment reads: "It is therefore ordered, adjudged and decreed by the court that
251 the final account of John L. Bird, administrator of said estate, be, and the same hereby is, by the Court approved. (Record, p-. 27-28.)

Sixth. That the attempted appeal by plaintiff in error in the above entitled cause, is from a judgment of the District Court of Osage County, Oklahoma, rendered on the 2nd day of April, 1915, which in part reads: "The above entitled matter came on regularly for hearing * * * upon the final account of John L. Bird, administrator, with the exceptions filed thereto by appellant, John Kinny * * * and the court having heard the evidence and the argument of counsel and being fully advised in the premises finds that the final account rendered by John L. Bird, administrator of the estate of said Lah-tah-sah, deceased, is true and correct; that said administrator has made no profit out of the estate and has made disbursements as stated in said account and statement of disbursements since rendition of said final account and that said disbursements should be approved." (Record, pp. 100-103, reading on 100.)

Seventh. That the contest in the County court of Osage County, Oklahoma, and the contest in the District Court of Osage County, Oklahoma, on appeal from the county court, was on exceptions to final account of the administrator and the administrator was a necessary part to the appeal, but has not been made so.

In support of the above mentioned grounds for dismissal we submit the following:

(A) That on the 28th day of January, 1914, John L.
252 Bird, then administrator of the estate of said Lah-tah-sah, Osage Allottee No. 256, deceased, filed in the county court of Osage County, Oklahoma, his final account, showing balance in his hands, subject to distribution, the sum of $210.00, and alleging that he was informed and believed that the heirs of said Lah-tah-sah and their respective interests were Laban Miles, surviving husband, one-half, John Kinny, son, one-half, and asking that he be allowed to make distribution accordingly and be discharged, as shown by certified copy thereof hereto attached and marked "Exhibit A" and made a part of this motion.

(B) That on the 28th day of Feb., 1914, the plaintiff in error, John Kinny, filed objections and exception to the report of administrators as per certified copy thereof hereto attached, marked "Exhibit B," and made a part of this motion.

(C) Said John L. Bird, former administrator of the estate of said Lah-tah-sah, deceased, filed in the county court of Osage county Oklahoma, his written resignation as such administrator on the 31st day of December, 1914, as per certificate thereof hereto attached marked "Exhibit C," and made a part of this motion.

(*d*) That on the 2nd day of January, 1915, the County Court of Osage County, Oklahoma, made an order accepting the resignation of John L. Bird as such administrator and ordered that said administrator file an account covering his administration since last report, a certified copy of which said order is hereto attached, marked Exhibit B, and made a part of this motion.

253 (E) That on the 3rd day of February, 1915, said John L. Bird, as such administrator, filed his account, as per order of Court, covering a period of time from January 23rd, 1914, to January 13, 1915, as per certified copy thereof hereto attached marked "Exhibit C" and made a part of this motion.

(*f*) That on the 22nd day of March, 1915, said John L. Bird, administrator of the estate of said Lah-tah-sah, deceased, filed in the County Court of Osage County, Oklahoma, his petition praying that W. O. Dildine of Pawhuska, Oklahoma, be appointed administrator of the estate of said Lah-tah-sah, deceased, as per certified copy thereof hereto attached, marked "Exhibit F" and made a part of this motion.

(G) That on the 22nd day of March, 1915, Thos. Leahy, Court Clerk by A. B. Cotter, Deputy, issued notice of application for appointment of W. O. Dildine as administrator of the estate of Lah-tah-sah, deceased, which said notice was posted as provided by law, as shown by certified copy of said notice hereto attached, marked "Exhibit G" and made a part of this motion.

(H) That on the 20th day of May, 1915, the county court of Osage county, Oklahoma, Elmer J. Black, County Judge, made an order discharging John L. Bird as administrator of the estate of Lah-tah-sah, deceased, and made an order appointing W. O. Dildine, administrator of the said estate of said Lah-tah-sah, deceased, to succeed the said John L. Bird, as administrator of said estate, as shown by certified copy thereof hereto attached, marked "Exhibit H," and made a part of this motion.

254 (I) That on the 20th day of May, 1915, letters of administration were issued to said W. O. Dildine, as administrator of the estate of said Lah-tah-sah, deceased, and on said 20th day of May, 1915, said W. O. Dildine made oath that he would perform according to law the duties of administrator of the estate of Lah-tah-sah, deceased, which said letters of administration and oath were filed in the county court of Osage county, Oklahoma, on May 20th, 1915, and recorded in Administrator Record Book 1, page 540, as shown by certified copy thereof hereto attached, marked "Exhibit I," and made a part of this motion.

(J) That on the 20th day of May, 1915, said W. O. Dildine qualified as the administrator of the estate of said Lah-tah-sah, deceased, by executing a bond to the State of Oklahoma in the penal sum of $500.00 with two good and sufficient sureties, each qualifying for the full amount of said bond, and which said bond was on the 20th day of May, 1915, approved by Elmer J. Black, County Judge, of Osage County, Oklahoma. The said bond was filed in the County Court on the 20th day of May, 1915, and recorded in Adm. Bond

Record 1, page 357, as shown by a certified copy thereof hereto attached, marked "Exhibit J," and made a part of this motion.

255 (K) That on the 20th day of May, 1915, said W. O. Dildine, the duly appointed, qualified, and acting administrator of the estate of said Lah-tah-sah, deceased, the successor of John L. Bird, resigned, receipted the said John L. Bird for the sum of $169.25, balance in the hands of the said John L. Bird, resigned, belonging to the estate of said Lah-tah-sah, deceased, which said receipt was filed in the county court of Osage county, Oklahoma, on the 21st day of May, 1915, as shown by certified copy thereof hereto attached and marked "Exhibit K," and made a part of this motion.

That said John L. Bird was discharged as administrator of said estate and said W. O. Dildine appointed administrator of said estate, and qualified as such on the 20th day of May, 1915.

That notice of settlement of case-made was served on H. P. White, attorney for Laban Miles on July 6th, 1915, but said case-made was not served on W. O. Dildine, administrator, nor on John L. Bird, former administrator (Record p. 117).

That on July 6th, 1915, the trial judge made an order in which it is stated that: "Said John Kenny by his attorneys has served Laban Miles the appellee in said cause and H. P. White, attorney for said Laban Miles, with notice in writing that they will present said case-made" at a time and place named for settlement and signing, but there was no finding that any notice of same had been served on the administrator of said estate or any other person (Rec. p. 119).

256 That on July 12th, 1915, said case-made was signed and settled without notice to the administrator, and without appearance by said administrator, and without said administrator being present either in person or by attorney.

That W. O. Dildine, the duly appointed, qualified and acting administrator of the estate of said Lah-tah-sah deceased, since May 20th, 1915, has not been made a party to the proceeding in error, and has been served with no summons in error, and has not waived summons in error, and has made no appearance, and by reason of the foregoing the Honorable Supreme Court is without jurisdiction.

H. P. WHITE,
Attorney for Laban Miles.

257 EXHIBIT A.

STATE OF OKLAHOMA,
Osage County, ss:

In the County Court of said County.

To the Judge of said Court:

To The undersigned, as the administrator of the estate of Lah-tah-sah, Osage Allottee No. 256 deceased, respectfully submits the following as a full and correct account and report of his adminis-

tration as such admr. from November 20, 1912 to the 23rd day of January, 1914, which account exhibits not only the debts which have been paid, but also contains a statement of all the debts which have been presented and allowed during the period embraced to this account.

I charge Myself with the following, to-wit:

Dec. 11, 1912—Lease	$240.00
Total amount of moneys received or collected	$240.00

Contra.

I ask myself to be credited with the following payment to creditors of deceased, as per voucher herewith submitted.

No. 20, 1912—Premium on Surety Bond	$15.00	
No. 20, 1913— " " " "	15.00	
Total amount received		$240.00
Total amount paid out		30.00
Balance due		$210.00

(Signed) JOHN L. BIRD.

STATE OF OKLAHOMA,
Osage County, ss:

Jno. L. Bird being duly swom, on *otah* says, that he has read the foregoing account and report of his administration, as the admr. of the estate of Lah-tah-sah, Osage Allottee 256 deceased, and knows the contents thereof, and that the same are true and correct.

JOHN L. BIRD.

258 Duplicate of True Copy.

STATE OF OKLAHOMA,
Osage County, ss:

I, Thos. Leahy, Court Clerk, in and for the County and State aforesaid, do hereby certify that the instrument hereto attached is a full, true and correct copy of Final Account as the same now appears of record at this office.

Witness my hand and the seal of said Court at Pawhuska, Oklahoma, on this 6 day of Dec., 1915.

[SEAL.] THOS. LEAHY,
Court Clerk,
By A. R. COTTER, *Deputy.*

259 Subscribed and sworn to before me, this 24th day of January, 1914.

[SEAL.] C. F. LAKE,
Notary Public.

My Commission expires Mar. 7, 1915.

Your administrator (executor) further reports that the debts and claims against said estate have all been paid, leaving the above balance to be distributed between the parties lawfully entitled thereto; Your administrator (executor) therefore petitions the Court to determine and find the heirs of said estate, which he is informed and believes to be the following named persons and entitled to said estate as follows:

Laban Miles, surviving husband, One-half;
John Kenny, son, One-half;

now moves the court that said heirs be determined and be allowed to make distribution of said estate, and take receipts therefor, and present the same to this Court and be discharged; all of which is respectfully submitted.

JOHN L. BIRD.

Subscribed and sworn to before me this 24th day of January A. D. 1914.

[SEAL.] C. F. LAKE,
Notary Public.

My Commission expires Mar. 7, 1915.

Statement of Claims presented and allowed, none.
Total amount of claims allowed, none.
Very respectfully submitted, this 24th day of Jan. 1914.

JOHN L. BIRD,
Administrator.

Indorsed: Original. No. 389. Final Account of Administrator, or Executor. In County Court, of Osage County, Oklahoma. In the Matter of the Estate of Lah-tah-sah, deceased. Final account of Jno. L. Bird, adm'r. Filed Jan'y 28, 1914. Belva L. Moore, Clerk.

Service of within account and receipt of copy thereof acknowledged this 15th day of Jan. 1914.

JAMES A. CARRALL,
Supt. Osage Agency,
Per F. A. B.

260 EXHIBIT B.

In the County Court of Osage County, Oklahoma.

In the Matter of THE ESTATE OF LAH-TAH-SAH, Deceased.

Objection, Motion, and Application of John Kinny.

Comes now John Kinny, son of the decedent, and alleges that he is the sole and only heir at law of said Lah-tah-sah, that he is the son of such decedent, that Laban Miles is not an heir of said

decedent; and this said John Kinny objects and excepts to the final report of the administrator herein in that said report suggests that Laban Miles is an heir of such decedent, when in truth and in fact he is not.

Wherefore, the said John Kinny prays that this court inquire, ascertain and determine that the said Laban Miles is not an heir and has no interest in said estate, and that said John Kinney, is the sole and only heir and that the whole of said estate be distributed to him and that said report be amended accordingly.

JOHN KINNY,
By JOHN EMBRY,
His Attorney.

Endorsed: No. 389. In the matter of the estate of Lah-tah-sah, deceased. Objection, Motion and Application of John Kinny. Service accepted this 28th day of Feb. 1914. James A. Carrall, Supt. Osage Agency, by F. A. Baker. State of Oklahoma, County of Osage. Pawhuska, Okla. Filed Feb. 28, 1914. Belva L. Moore, Clerk County Court.

261 Duplicate of True Copy.

STATE OF OKLAHOMA,
Osage County, ss:

I, Thos. Leahy, Clerk in and for the County and State aforesaid, do hereby certify that the instrument hereto attached is a full, true and correct copy of Objection to final account, as the same now appears of record at this office.

Witness my hand and the seal of said Court, at Pawhuska, Oklahoma, on this 6 day of Dec. 1915.

THOS. LEAHY,
Court Clerk,
[SEAL.] By A. B. COTTER, *Deputy.*

262 EXHIBIT C.

In the County Court of Osage County, Oklahoma.

No. 389.

In the Matter of THE ESTATE OF LAH-TAH-SAH, Deceased; JOHN L. BIRD, Administrator.

Resignation of Administrator.

Comes now John L. Bird, administrator of the estate of the said Lah-tah-sah, deceased, and tenders his resignation as such administrator.

Wherefore your administrator asks that he be relieved from duty as said administrator as soon as possible.

JOHN L. BIRD,
By GRINSTEAD & SCOTT,
His Attorneys.

STATE OF OKLAHOMA,
County of Osage, ss:

I hereby certify that a full true and correct copy of the above and foregoing was this 31st day of December, 1914, filed in my office.

[SEAL.]

J. A. CARROLL,
By A. T. W., *Supt.*

Indorsed: No. 389. In the County Court of Osage County, Oklahoma. In the matter of the Estate of Lah-tah-sah, Deceased. Resignation of Administrator. State of Oklahoma, Osage County, Pawhuska, Okla. Filed Dec. 31, 1914. Belva L. Moore, Clerk County Court. Grinstead & Scott, Pawhuska, Okla., Attorneys for Administrator.

263 Duplicate of True Copy.

STATE OF OKLAHOMA,
Osage County, ss:

I, Thos. Leahy, Court Clerk, in and for the County and State aforesaid, do hereby certify that the instrument hereto attached is a full, true and correct copy of Resignation of Administrator as the same now appears of record at this office.

Witness my hand and the seal of said Court at Pawhuska, Oklahoma, on this 6 day of Dec. 1915.

THOS. LEAHY,
Court Clerk,
By A. B. COTTER, *Deputy.*

264 EXHIBIT D.

In the County Court, Osage County, Oklahoma.

In the Matter of THE ESTATE OF LAH-TAH-SAH, Deceased; JOHN L. BIRD, Administrator.

Order for Administrator to File Final Account.

Now on this 2d day of January, 1915, John L. Bird, administrator having filed his resignation as such administrator, said application comes on for the consideration of the Court, and the Court after considering same hereby accepts such resignation, orders and directs that said administrator file a final account covering his administra-

tion since last report, and that said account be filed as soon as possible.

PAUL B. MASON, [SEAL.]
County Judge, Osage County, Oklahoma.

Indorsed: No. 389. In the —— Court, Osage County, Oklahoma. State of Oklahoma, Osage County, Pawhuska, Okla. Filed Jan. 2, 1915. Belva L. Moore, Clerk County Court, Grinstead & Scott, Pawhuska, Okla., Attorneys for —— ——. P. J. 4-P. 63.

Duplicate of True Copy.

STATE OF OKLAHOMA,
Osage County, ss:

I, Thos. Leahy, Court Clerk, in and for the County and State aforesaid, do hereby certify that the instrument hereto attached is a full, true and correct copy of Order for Admr. to file accounts as the same now appears of record at this office.

Witness my hand and the seal of said court at Pawhuska, Oklahoma, on this 6 day of Dec. 1915.

THOS. LEAHY,
Court Clerk,
[SEAL.] By A. B. COTTER, *Deputy.*

265 In the County Court, Osage County, Oklahoma.

No. 389.

In the Matter of THE ESTATE OF LAH-TAH-SAH, Deceased; Osage Allottee No. 256.

Final Report of Administrator In Re Administrator's Resignation.

The undersigned administrator of the estate of Lah-tah-sah, deceased, respectfully submits the following as a full and correct statement and report of his administration from January 23d, 1914, as shown by his final report, to January 13, 1915.

January 23, 1914, amount on hand as shown by last report, less amount of statement of disbursements filed and approved by court since filing final account.....	$185.00
Total amount received.....	185.00
Dec. 31, 1914, Administrators' commission and fees, as per Court order	12.00
Administrators' Bond, Title Guaranty & Surety Company, 1914 term	3.75
Total amount paid out.....	$15.75

Total amount received..... $185.00
Total amount paid out..... 15.75

Balance on hand..... 169.25

There are no other assets in hands of administrator or due the estate.

That the heirs in said estate have been determined by the County Court but an appeal has been taken and the case is now pending on appeal.

266 PAWHUSKA, OKLA., Jan. 12, 1915. No. —.

Citizens National Bank. 86-186.

Pay to John L. Bird, or Order..... $12.00
Twelve & 00/100 ..... Dollars

LAH-TAH-SAH #256.

JOHN L. BIRD, *Administrator.*

Administrator Fees by order of Court.

[Written across face:] Citizens National Bank. Paid Jan. 12, 1915. Pawhuska, Okla.

267 MUSKOGEE, OKLA., 1/13/15.

Mr. John Bird, G'd'n Lah-tah-sah, #256, to The Title Guaranty & Surety Company, Dr.

Home Office: Scranton, Pennsylvania.

To pt. 3rd year premium on Bond No. J42881..... $3.75

Rec'd payment,

EDW. C. GRIESEL, *Trustee.*

To 2/14/15.

268 EXHIBIT E.

Wherefore, your administrator prays that said report be set for hearing on a day certain and that upon said hearing that said report be approved and that he be discharged from further duty in said cause and his official bond released and his resignation accepted.

JOHN L. BIRD,
Administrator.

STATE OF OKLAHOMA,
County of Osage, ss:

John L. Bird, administrator of the estate of Lah-tah-sah, deceased, being duly sworn says that the foregoing is a full, true and complete statement and report of his administration of said estate and all moneys received and paid out since his last report from January 23d, 1914, to January 13, 1915.

[SEAL.]

JOHN L. BIRD,
Administrator.

Subscribed and sworn to before me this 14th day of January, 1915.

ANDREW JOYCE,
Notary Public, Osage County, Okla.

My commission expires: Nov. 21, 1918.

Copy of report filed in my office this 3rd day of January, 1915.

W. F. HAYGOOD,
Act'g Supt. Osage Agency, A. T. W.

Indorsed: No. 389. In the County Court, Osage County, Okla. In re Lah-tah-sah, deceased. Final report in re resignation of administrator. County Court. State of Oklahoma, Osage County. Pawhuska, Okla. Filed Feb. 3, 1915, by A. B. Cotter, Deputy. Grinstead & Scott, Pawhuska, Okla., Attorneys for Administrator.

269 Duplicate of True Copy.

STATE OF OKLAHOMA,
Osage County, ss:

I, Thos. Leahy, Court Clerk, in and for the County and State aforesaid, do hereby certify that the instrument hereto attached is a full, true and correct copy of final account as the same now appears of record at this office.

Witness my hand and the seal of said Court at Pawhuska, Oklahoma, on this 6 day of Dec., 1915.

THOS. LEAHY,
Court Clerk,
By A. B. COTTER, *Deputy.*

270 EXHIBIT F.

In the County Court, Osage County, Oklahoma.

No. 389.

In the Matter of THE ESTATE OF LAH-TAH-SAH, Deceased.

Petition for Letters of Administration.

Comes now John L. Bird, administrator of the estate of Lah-tah-sah, deceased, and states to the court that he desires to resign as such administrator and has filed in this court his resignation; that he is a competent person to suggest the appointment of an administrator of said estate and suggests the appointment of W. O. Dildine, of Pawhuska, Oklahoma, as a competent and proper person to be appointed administrator herein.

Wherefore, your petitioner prays that the said W. O. Dildine of Pawhuska, Oklahoma, be appointed administrator of said estate.

JOHN L. BIRD,
Administrator of the Estate of Lah-tah-sah, Deceased.

Subscribed and sworn to before me this 18th day of March, 1915.

[SEAL.] ANDREW JOYCE,
Notary Public.

My Commission expires Nov. 21, 1918.

I hereby accept service of a copy of the above this 22nd day of March, 1915.

J. GEO. WRIGHT,
Supt. Osage Agency,
A. T. W.

Endorsed: No. 389. County court, State of Oklahoma, Osage County; Pawhuska, Okla. Filed Mar. 22, 1915. Thos. Leahy, Court Clerk, by A. B. Cotter, Deputy. Grinstead & Scott, Pawhuska, Okla., Attorneys for ——.

271 Duplicate of True Copy.

STATE OF OKLAHOMA,
Osage County, ss:

I, Thos. Leahy, Court Clerk, in and for the County and State aforesaid, do hereby certify that the instrument hereto attached is a full, true and correct copy of Petition for Letters as the same now appears of record at this office.

Witness my hand and the seal of said court at Pawhuska, Oklahoma, on this 6th day of Dec. 1915.

[SEAL.] THOS. LEAHY,
Court Clerk,
By A. B. COTTER, *Deputy.*

272 EXHIBIT G.

In the County Court, County of Osage, State of Oklahoma.

In THE ESTATE OF LAH-TAH-SAH, Deceased.

The State of Oklahoma to the Heirs next of Kin, U. S. Indian Superintendent of the Osage Agency, and Creditors of the said Lah-tah-sah, Deceased:

You are hereby notified that John L. Bird has applied for letters of administration of said estate to be granted to W. O. Dildine and that said petition will be heard at the Court room of said court in the city of Pawhuska, in said county and State, on the 10th day of April, 1915, at 9:00 o'clock A. M. at which time you may appear and show cause, if any you have, why said petition should not be granted.

Witness my hand and the Seal of said Court hereunto affixed this 22d day of March, 1915.

[SEAL.]
[SEAL.]
[SEAL.]

THOS. LEAHY,
Court Clerk,
By A. B. COTTER, *Deputy.*

273 STATE OF OKLAHOMA,
Osage County, ss:

I, the undersigned, do solemnly swear that on the 25th day of March, 1915, I posted true copies of the within notice in three public places in Osage county, as follows, one at the Court House in the City of Pawhuska, one at City Hall Bldg. and one at Old Agency Bldg. and served one copy on Supt.

——— ———.

Subscribed and Sworn to before me this 26th day of March, A. D. 1915.

A. B. COTTER, *Deputy.*

No. 389.

In the Matter of THE ESTATE OF LAH-TAH-SAH, Deceased.

Notice of Application for Appointment of Administrator.

Filed in County Court, Osage County, Okla., this M. 26th day of March, 1915.

THOS. LEAHY,
Court Clerk,
By A. B. COTTER, *Deputy*

274 EXHIBIT H.

In the County Court, Osage County, Oklahoma.

No. —.

In the Matter of THE ESTATE OF LAH-TAH-SAH, Deceased.

Order Discharging Administrator and Appointment of Successor.

And now on this 20th day of May, 1915, the above entitled cause comes on for hearing upon the final settlement of John L. Bird for the purpose of resigning as such administrator, and it appearing to the court that hearing of said final report was published as provided in the order of court setting said cause for hearing and return was duly made thereon, the said administrator appearing in person and by his attorneys Grinstead & Scott and the Superintendent of the Osage Agency appearing by A. T. Woodward, the court proceeds to examine said report and after hearing the evidence adduced, argument of counsel and being fully advised in the premises, finds that said administrator has received no funds except those on hand from last report in the sum of $169.25, that he was paid out the sum of $00.00 which expenditures were just and valid charges against said estate and that there remains in the hands of said administrator a balance of $169.25 and it appearing to the court that said administrator has faithfully performed all the duties enjoined upon him as such administrator and there being no objection to the approval of said report, the court finds that said report should be in all things approved.

It is therefore ordered, adjudged and decreed by the Court that said administrators' final account be and the same is hereby approved in all things.

275 And the said John L. Bird, administrator of the estate of the said Lah-tah-sah, deceased, having filed in this court his resignation as such administrator and the said administrator having accounted for all moneys he has received in said estate and there being no objections filed, and the court being fully advised in the premises, finds that said administrator's resignation should be accepted, that he be discharged and his bondsmen released.

It is therefore ordered, adjudged and decreed by the Court that the resignation of the said John L. Bird as administrator of said estate be and the same is accepted and said administrator is discharged as such administrator and his bondsmen on his official bond released, upon his turning over to his suc-essor as such administrator all funds in his hands belonging to the estate of said deceased, and filing in this court receipt therefor.

And now at this time comes on for hearing, the application for the appointment of W. O. Dildine as administrator of the estate of the said Lah-tah-sah, deceased to succeed the said John L. Bird, as administrator of said estate whose resignation as such administrator

has been accepted, and the petitioner appearing in person and by his attorneys Grinstead & Scott and the Osage Superintendent appearing by A. T. Woodward and the Court having read and considered said petition, hearing the evidence, argument of counsel and being fully advised in the premises and it appearing that said petition has been legally set for hearing, finds that said petition should be sustained; that said W. O. Dildine is a proper person to be appointed as such administrator, and there being no objections filed to the granting of said petition,

It is further ordered, adjudged and decreed by the court that said W. O. Dildine be and he is hereby appointed administrator of the estate of said deceased to succeed John L. Bird as administrator of said estate, subject to the approval of bond in the sum of $500.00, that upon the approval of said bond letters of administration issue to the said W. O. Dildine.

276

And now at this time the said John L. Bird, having this day presented to this court, and filed herein, receipt from the said W. O. Dildine as administrator of said estate of all moneys justly due said estate in his hands and that he the said John L. Bird had not received any funds or moneys belonging to said estate nor expended out of the funds in his hands belonging to said estate any funds for any purpose since his final report; that he has performed all the acts which by law and the order of this court were enjoined upon him and that no further acts remain to be performed.

Now on motion of counsel for the said John L. Bird, it is ordered, adjudged and decreed by the court that said John L. Bird as administrator has fully discharged the duties of his trust; that he is hereby wholly and absolutely discharged from all further duties and responsibility as such administrator and that his letters of administration are hereby vacated; and the sureties on his official bond are hereby released from any liability to be hereinafter incurred.

[SEAL.] ELMER J. BLACK,
County Judge of Osage County, Oklahoma.

Endorsed: In the county court of Osage county, Okla., in the matter of Lah-tah-sah, deceased. Order approving final report discharging administrator, and appointing W. O. Dildine administrator. County Court, State of Oklahoma, Osage County, Pawhuska, Okla. Filed May 21, 1915. Thos. Leahy, Court Clerk, by A. B. Cotter, Deputy. Recorded Probate J. 4, P. 189, Grinstead & Scott, Att'y-for John L. Bird, Adm.

277 Duplicate of True Copy.

STATE OF OKLAHOMA,
Osage County, ss:

I, Thos. Leahy, Court Clerk, in and for the County and State aforesaid, do hereby certify that the instrument hereto attached is a full, true and correct copy of Order Discharging Admr. Appointing Successor as the same now appears at this office.

Witness my hand and the seal of said court at Pawhuska, Oklahoma, on this 6 day of Dec. 1915.

THOS. LEAHY,
Court Clerk,
By A. B. COTTER.

278 EXHIBIT I.

Letters of Administration.

STATE OF OKLAHOMA,
Osage County, ss:

In County Court.

Osage Allottee Roll No. —.

In the Matter of THE ESTATE OF LAH-TAH-SAH, Deceased.

W. O. Dildine is hereby appointed administrator of the estate of Lah-tah-sah, Deceased.

Witness; Elmer J. Black, Judge of the County Court of Osage County, State of Oklahoma, with the seal thereof, affixed the 20th day of May, 1915.

[SEAL.]

ELMER J. BLACK,
County Judge.

STATE OF OKLAHOMA,
Osage County, ss:

I, W. O. Dildine, do solemnly swear that I will perform according to law, the duties of administrator of the estate of Lah-tah-sah Deceased, so help me God.

W. O. DILDINE.

Subscribed and sworn to before me this 20th day of May, 1915.

[SEAL.]

A. B. COTTER,
Deputy Court Clerk.

279 Endorsed on Back.

STATE OF OKLAHOMA,
County of Osage, ss:

I, Thos. Leahy, Jr., Court Clerk, in and for the County and state aforesaid, do hereby certify that the foregoing instrument is a full true and correct copy of the letters of Administration in the matter of the Estate of Lah-tah-sah, deceased, issued to W. O. Dildine, as the same now appears of record in this office.

Witness my hand and Seal at Pawhuska, Oklahoma, on this — day of May, 1915.

——— ———,
Clerk of County Court.

Original, No. 389.

In the Matter of the THE ESTATE OF LAH-TAH-SAH, Deceased.

Letters of Administration.

Filed May 20th, 1915.

THOS. LEAHY,
Clerk of County Court.
A. B. COTTER, *Dep.*

Recorded in Administrator's Record Book 1, page 540.

Duplicate of True Copy.

STATE OF OKLAHOMA,
Osage County, ss:

I, Thos. Leahy, Court Clerk, in and for the county and State aforesaid, do hereby certify that the instrument hereto attached is a full, true and correct copy of letters of Administration at the same now appears of record at this office.

Witness my hand and the seal of said court at Pawhuska, Oklahoma, on this 6 day of Dec., 1915.

[SEAL.]

THOS. LEAHY,
Court Clerk,
By A. B. COTTER, *Deputy.*

280 EXHIBIT J.

Administrator's or Executor's Bond.

STATE OF OKLAHOMA,
Osage County, ss:

In the County Court.

In the Matter of THE ESTATE OF LAH-TAH-SAH, Deceased.

Know all men by these presents, that we W. O. Dildine as principal and Ed. T. Kennedy and B. P. McDonald as sureties, are held and firmly bound unto the State of Oklahoma, in the penal sum of Five Hundred ($500.00) Dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns jointly and severally by these presents.

The condition of the above obligation is such that Whereas, by order of the County Court of Osage County, State of Oklahoma, made and entered on the 20th day of May, A. D. 1915, the above named principal was appointed Administrator of the estate of Lah-

tah-sah, deceased, and letters of Administration were directed to issue to said principal upon his taking and subscribing the oath required by law, and executing a bond to the State of Oklahoma, in the penal sum of Five Hundred Dollars, with two or more sureties to be approved by the Judge of said Court. This bond is subject to all the conditions in Section 3 of the Act of Congress approved April 18, 1912, amendatory of the Osage Allotment Act of June 28, 1906, and the provisions of said section are made a part hereof.

Now, if the above bounden principal shall faithfully execute the duties of such trust as such administrator according to law, then this obligation to be void, otherwise to remain in full force and effect.

In Witness whereof, we have hereunto subscribed our names, this 20th day of May, A. D. 1915.

W. O. DIDDINE.
ED. T. KENNEDY.
B. P. McDONALD.

281 STATE OF OKLAHOMA,
Osage County, ss:

The undersigned, sureties on the foregoing bond, being duly sworn, on oath each for himself says: I am a resident householder and freeholder within the State of Oklahoma, and have property within said state worth over and above all my just debts and liabilities, exclusive of property exempt from execution, the sum set out and stated below, that is to say:

Ed. T. Kennedy.....Am worth the sum of $500.00
B. P. McDonald.....Am worth the sum of $500.00

ED. T. KENNEDY.
B. P. McDONALD.

Subscribed and sworn to before me this 20-h day of May, 1915.

[SEAL.] A. B. COTTER,
Dep. Court Clerk.

I hereby approve the above bond this 20th day of May, 1915.

[SEAL.] ELMER J. BLACK,
County Judge.

Duplicate of True Copy.

STATE OF OKLAHOMA,
Osage County, ss:

I, Thos. Leahy, Court Clerk, in and for the county and state aforesaid, do hereby certify that the instrument attached is a full, true and correct copy of Admr. Bond as the same appears of record at this office.

Witness my hand and the seal of said court at Pawhuska, Oklahoma, on this 6 day of Dec., 1915.

[SEAL.]

THOS. LEAHY,
Court Clerk,
By A. B. COTTER, *Deputy.*

282 Endorsed: No. 389. In the County Court of Osage County. Bond. Estate of Lah-tah-sah, Deceased. Filed this 20 day of May, 1915. Thos. Leahy, Court Clerk, by A. B. Cotter, Deputy Clerk. Recorded Adm. Bond Rec. 1, P. 357.

283 EXHIBIT K.

In the County Court, Osage County, Oklahoma.

No. 389.

In the Matter of THE ESTATE OF LAH-TAH-SAH, Deceased.

Receipt.

I, W. O. Dildine, the duly appointed, qualified and acting administrator of the estate of Lah-tah-sah and successor of John L. Bird, resigned, hereby acknowledge receipt of the sum of $169.25 from the said John L. Bird.

Dated this 20th day of May, 1915.

W. O. DILDINE,
Administrator.

STATE OF OKLAHOMA,
County of Osage, ss:

I hereby certify that a copy of the within and foregoing was this 20th day of May, 1915, filed in my office.

J. GEO. WRIGHT,
Superintendent Osage Agency.
A. T. W.

Endorsed: No. 389. In the county court of Osage county, Oklahoma. In the matter of the estate of Lah-tah-sah, Deceased. Receipt from W. O. Dildine, admin. County Court, State of Oklahoma, Osage County, Pawhuska, Okla. Filed May 21, 1915. Thos. Leahy, Court Clerk, by A. B. Cotter, Deputy.

Duplicate of True Copy.

STATE OF OKLAHOMA,
Osage County, ss:

I, Thos. Leahy, Court Clerk, in and for the county and state aforesaid, do hereby certify that the instrument hereto attached is

a full, true and correct copy of Receipt as the same now appears at this office.

Witness my hand and the seal of said court at Pawhuska, Oklahoma, on this 6th day of Dec., 1915.

[SEAL.] THOS. LEAHY,
Court Clerk,
By A. B. COTTER, *Deputy.*

284 Endorsed: No. 7708. In the Supreme Court of Oklahoma. John Kenny Plaintiff in Error vs. Laban Miles et al., Defendants in Error. Motion to Dismiss. H. P. White, Pawhuska, Okla., Att'y for Laban Miles.

285 In the Supreme Court of the State of Oklahoma.

No. 7708.

JOHN KENNY, Plaintiff in Error,

vs.

LABAN MILES, and JOHN L. BIRD, Administrator of the Estate of LAH-TAH-SAH, Deceased, Osage Allottee, #256, Defendants in Error.

Response and Brief Resisting Motion to Dismiss Appeal.

Comes now John Kenny, plaintiff in error, herein, and in this, his response and answer to the motion of defendant in error, Laban Miles, to dismiss the appeal in said cause, alleges and states:

(1.) Said plaintiff in error avers and states that the administrator of the estate of Lah-tah-sah, Osage Allottee, #256, deceased, is not a necessary party to this suit or proceedings, or to this appeal; that this suit is a contest of heirship between the plaintiff in error, John Kenny and the defendant in error, Laban Miles, and that the administrator of the estate of Lah-tah-sah, deceased, has no interest, whatever in the outcome or final determination of this action; that no objection or exception is taken by the said plaintiff in error, John Kenny, to the correctness of the final report or account of the administrator, of said estate and that no issue is made on the correctness of said account and exceptions are taken only to the opinion

286 and recommendation of said administrator as to the heirs, and the only reference to said administrator's report is a prayer that said report be amended to show that the said plaintiff in error, John Kenny, is the sole and only heir at law of the said Lah-tah-sah, deceased.

That the final report of the administrator after stating his opinion that defendant in error, Laban Miles, is an heir of Lah-tah-sah, deceased, contains an application to the court to determine the heirs as follows:

"Now moves the court that said heirs be determined," (See Exhibit "A" attached to plaintiff in error's motion to dismiss)

and plaintiff in error's so-called objections to said final report does not challenge the correctness of the account, but is an application to determine the heirs, in part as follows:

"Wherefore, the said John Kenny prays that this court inquire, ascertain and determine that the said Laban Miles is not an heir and has no interest in said estate and that said John Kenny is the sole and only heir and that the whole of said estate be distributed to him and that said report be amended accordingly;" (See Exhibit "B" attached to Motion to Dismiss)

so that the only proceeding had in this cause is merely a suit for the determination of the heirs of Lah-tah-sah, deceased, upon the application of said John Kenny, upon the hearing of the final report of the former administrator, John L. Bird, who has been made a party to this appeal, and has been both served and has ac-
287 cepted. (See return of summons in error and also record in main case, page 187.)

In support of which we hereby refer to Exhibits "A" and "B" attached to defendant in error's motion to dismiss, which are respectively the final report or account of the administrator, and the objection of the said John Kenny, plaintiff in error, to the administrator's report, and also to brief and citation of authorities of plaintiff in error, which is hereto attached, marked "Exhibit A," for identification and made a part hereof.

(2.) That the said John L. Bird, administrator, was not a necessary party to said action; that the judgment in the county court of Osage county, Oklahoma, was rendered on the 14th day of March, 1914, (See C. M. pages 27 and 28) and that the judgment on appeal to the district court was rendered on the 2nd day of April, 1915, (See C. M. 101-3) and that the said John L. Bird, administrator, was not discharged as such administrator until the 20th day of May, 1915, after the rendition of both of said judgments, and was discharged without personal or legal notice to the said plaintiff in error, John Kenny, or his attorneys; and that said W. O. Dildine was appointed as such administrator without notice to plaintiff in error or his attorneys and without knowledge to them until the filing herein of the motion to dismiss; that on September —, 1915, the said John L. Bird, still represented to plaintiff in error, that is, to plaintiff in error's attorneys, that he was still administrator of said estate and signed waiver of summons in error and appearance herein; and plaintiff in error had no information that there had been any change in that respect until after the filing of the appeal in this court and the time had expired for taking further appeal, and plaintiff in error believes that such change in administrator was made for the purpose of deceiving this plaintiff in error to
288 his disadvantage.

(3.) That the said John L. Bird, and the said W. O. Dildine, had and have no interest whatever in said action and were not necessary parties to said action; that the said John L. Bird, admin-

istrator, was not present either in person or by counsel at the trial in the county court, or in the district court of Osage County, Oklahoma, referred to in paragraph #2 of this answer, that no pleadings on behalf of said administrator, other than said final report was filed in said cause; that the objections of the said John Kenny, plaintiff in error, to said report did not go to the correctness of said final account or to the correctness of any item thereof, going only to that portion of said report wherein the said John L. Bird, administrator, recommended that the said Laban Miles was a lawful heir of the said Lah-tah-sah, deceased, which is as follows:

"Your administrator, therefore petitions the court to determine and find the heirs of said estate, which he is informed and believes to be the following named persons and entitled to said estate, as follows: Laban Miles, surviving husband, one-half, John Kenny, son, one-half, and moves the court that said heirs be determined."

(See Exhibit "A" attached to defendant in error's motion to dismiss.)

Said petition in error has attached both the original case-made served on the said Laban Miles and a certified transcript of the record, judgment and proceedings in said cause.

289 (4.) Said defendant in error alleges and states that as a matter of law it was not necessary to serve notice of time and place of settling and signing case made in said action, upon the said W. O. Dildine, alleged administrator of the estate of Lah-tah-sah, deceased, nor on John L. Bird administrator of the said estate, or their attorneys, for the reason that neither the said W. O. Dildine nor the said John L. Bird had any interest whatever in said suit and were not and are not necessary parties to said suit.

That on the 28th day of February, 1914, the plaintiff in error, John Kenny, filed a demurrer to said plea of res adjudicata, (See C. M. page 20) and on the same day said matter was heard by Charles R. Gray, special judge of the county court of Osage county on said demurrer and on the same day the said Charles R. Gray, rendered judgment overruling said plaintiff in error's demurrer, (See C. M. page 21).

That thereafter on the 12th day of March, 1914, plaintiff in error filed in said cause his answer to the plea of res adjudicata filed by the defendant in error, Laban Miles, in which the said John Kenny, denied the fact that the said Laban Miles was ever married to Lah-tah-sah, the said Laban Miles claiming to be an heir by virtue of an alleged marriage to said Lah-tah-sah, and denied that said Laban Miles was an heir of the said Lah-tah-sah, and also attacking certain proceedings and alleged judgments in a previous administration in the county court and the proceedings in the district court, (C. M. pages 23-24) and also containing a general denial, that on the 14th day of March, 1914, the defendant in error, Laban Miles, filed in said cause his motion to strike all of said last above described answer excepting the general denial, (C. M. page 25) and on

290 the 14th day of March, 1914, said motion was sustained as to that part of the answer designated as paragraph #2, and

overruled as to the parts designated as #3, and A., B., and C., (C. M. Page 26).

That on the 14th day of March, 1914, the said special judge of the county court rendered a judgment finding that the said defendant, Laban Miles, was an heir of the said Lah-tah-sah, and approving said final report. (See C. M. 27-28.)

(5.) That it was not necessary for the said John L. Bird, or the said W. O. Dildine, to be present in person or by their attorneys at the time of settlement and signing the case-made for the reasons above stated; said plaintiff in error admits that the county court rendered judgment, a part of which approved the final account of John L. Bird, administrator of said estate, but alleges and states that no issue was made on the correctness of the account of the said John L. Bird, as administrator and no evidence was taken disputing the correctness of said account, but that the case was decided in the county court on a plea of res adjudicata offered by the defendant in error, Laban Miles, of a former alleged judgment rendered in the district court of Osage County, Oklahoma, on the 25th day of April, 1913, said plea of res adjudicata being shown at pages 14 to 19 inclusive of said case made, and a copy of said alleged judgment which was attached to defendant in error's plea as an exhibit is shown at pages 16 to 19 inclusive, of the case-made.

That thereafter said cause was appealed to the district court of Osage County, and after the election of A. R. Museller as
291 special judge, said cause came regularly on for trial, denovo, and on the 2nd day of April, 1914. (C. M. page 49.) The testimony and proceedings had which are shown in case-made from page 50 to 98 inclusive, show that there was no testimony whatever offered by either side with reference to the correctness of the account of John L. Bird, administrator, but that the only testimony relied upon by the said Laban Miles was the evidence offered by him of the former alleged judgment in the district court of Osage County, Oklahoma, with reference to the heirs of Lah-tah-sah, deceased. (See C. M. page 50 to 57 inclusive.)

That said John Kenny, plaintiff in error, offered no evidence as to the correctness or incorrectness or legality of the account of the said John L. Bird, administrator. (C. M. 57 to 98 inclusive.) On page 60 of the case-made it is shown that John Kenny, offered to introduce proof as to the question of heirship but that same was objected to on the ground that the alleged judgment rendered in the district court was res adjudicata and the court in sustaining the objection made the following findings:

"By the Court: Objections sustained for the reason that any testimony which goes to the question as to whether Laban Miles was the husband of Lah-tah-sah, at the time of her death has already been determined and this court cannot take judicial notice of the same." (See C. M. page 60.)

So that on this trial there was no issue whatever and no evidence whatever offered or introduced as to the correctness or sufficiency of the administrator's report, but the issues were made upon, and the testimony went solely to the matter of heirship and the court

rendered judgment finding that the plea of res adjudicata was a good plea. (See Journal Entry of Judgment, pages 100 to 103 inclusive.

292 On page 102 of said case-made, the court in its Journal Entry of Judgment, makes the following finding:

"The court further finds from the evidence that the heirs of the estate of Lah-tah-sah, deceased, have heretofore been determined by the district court of Osage County, Oklahoma, in the partition suit of Laban Miles, Plaintiff, vs. John Kenny, defendant, #1896, as per judgment of court pleaded herein by said Laban Miles, as a plea of res adjudicata and that said plea of res adjudicata should be sustained."

(6. & 7.) In answer to the 7th ground for dismissal, including paragraphs indicated by characters "*a*" to "*k*," inclusive, said plaintiff in error, John Kenny, adopts and reaffirms the matters and statements heretofore set out and stated in this response, and alleges and states that the only issue in said trial in the county court and in the district court and the only matter upon which evidence was introduced or offered was on the question of heirship; that no evidence was taken or offered questioning or attacking the correctness of the said report of the said John L. Bird, administrator, except as to his recommendation as to the identity of the *identity of the* heirs, which recommendation was not binding on the court; that said John L. Bird, former administrator, did not file in the county court of Osage County, Oklahoma, on the 31st day of December, his resignation, but merely tendered his resignation, and same

293 was not finally acted upon by the court nor the administrator discharged until May 20, 1915, after the trial in both the county court and the district court on appeal; that on the 2nd day of January, 1915, the court made an order accepting the resignation of John L. Bird, but that said administrator was not discharged and that said order did not become final nor was the administrator discharged until the 20th day of May, 1915, as shown by certified copy of record attached to said motion to dismiss; that on the 22nd day of March, 1915, said John L. Bird, administrator, of the estate of Lah-tah-sah, filed in the county court his petition, stating:

"That he desires to resign, and suggests the appointment of Dildine in his place."

(See Exhibit "B" attached to motion to dismiss.) But that said application was not passed upon until May 20th, 1915, after the trial both in the county court and in the district court and no notice whatever was given to said John Kenny, or his attorneys, of such application.

That on the 22nd day of March, 1915, a notice of application for appointment of W. O. Dildine, administrator, was issued; that said notice set the hearing of same for the 10th day of April, 1915, and there appears to have been no hearing of the matter on said date, but said matter was not passed upon by the court until May 20th, 1915, and there appears to have been no continuance or adjournment of the hearing of said matter from April 10th, 1915,

294 to May 20th, 1915, and the said plaintiff in error is informed and believes that there was no regular continuance or ad-

journment of the matter from April 10th, 1915, to May 20th, 1915; that the said John Kenny or his attorneys, had no personal notice of such application, and that the court was without jurisdiction to appoint the said W. O. Dildine, administrator; said defendant in error, John Kenny, admits that on the 20th day of May, 1915, a proposed order was made by the county court of Osage County, Oklahoma, and appointing W. O. Dildine, administrator, as shown by Exhibit "H," attached to motion to dismiss, but alleges and states that the court was without jurisdiction to make such order at that time; that said order was not made until after the judgment both in the county court and in the district court, and was without personal notice to the said John Kenny, or his attorneys.

Said defendant in error admits that on the 20th day of May, 1915, purported letters of administration were issued to said W. O. Dildine but alleges and states that same were without notice to said plaintiff in error or to his said attorneys, and that the court had no jurisdiction to make said order at that time; said plaintiff in error admits that on the 20th day of May, 1915, attempt to qualify and file in said cause a proposed bond was made, but alleges and states that said bond was without effect for the reasons above stated. That neither the said W. O. Dildine nor the said John L. Bird *was* necessary or interested parties to said action; that the said John L. Bird never appeared in any of the said proceedings in person, or by counsel and that no pleadings were filed on behalf of either of said parties and that it was not necessary to serve case-made on either said John L. Bird or the said W. O. Dildine, and neither the said John L. Bird nor the said W. O. Dildine was entitled to make
295 any suggestion or amendments to said case-made; said defendant in error alleges and states that the said John L. Bird was duly served with summons in error in this cause and that no personal notice and no legal notice were given to the said John Kenny or to his attorneys of the attempted action of the county court of Osage County, Oklahoma, on May 20th, 1915, in attempting to discharge the said John L. Bird, as administrator, and to appoint the said W. O. Dildine as administrator in his stead, and that said plaintiff in error and his said attorneys had no notice of such proceedings until after said cause had been filed in this court on appeal.

(8) Plaintiff in error alleges that this is not an action adverse to the estate of Lah-tah-sah, deceased, nor adverse to her administration, but is a controversy solely between this plaintiff in error and said Laban Miles, upon their claim of heirship of this estate; that the reversal of the judgment herein would not affect the estate of descent in any respect whatever, nor affect the administrator, nor affect the interests of the said John L. Bird, nor the interests of the said W. O. Dildine; that the said W. O. Dildine was not a party *of* the judgment of the district court of Osage County, which was appealed from and he cannot be made a party to such action; that all of the parties in the action in the district court of Osage County appealed from herein, have been made parties herein and duly brought into this appeal; that the said Lah-tah-sah, deceased, was a restricted Osage Indian

Allottee; and the said John Kenny and the said Laban Miles are restricted Osage Indians whose restrictions have not been removed by the Honorable Secretary of the Interior; that the estate of Lah-tah-sah, deceased, in the hands of the administrator consists solely of a small amount of money and nothing more; that there are no
296 debts against said administrator or estate; that there are no creditors of said estate and that the residue of said estate consists of restricted Osage Indian Allotments made to the said Lah-tah-sah, deceased, and of moneys due her from the United States which is held by the United States and the Superintendent of the Indian Agency, all of which allotments and moneys held by the United States and by the Superintendent of the Osage Indian Agency is restricted and under the control of the Honorable Secretary of the Interior; and that the only matter in issue in this appeal is to determine between this plaintiff in error and the said Laban Miles, whether or no the said Laban Miles is an heir of the said Lah-tah-sah, deceased; and a judgment in that respect would not affect the interests of said estate nor the interests of the administrator thereof, either in his official or personal capacity, or the interests of either the said W. O. Dildine or John L. Bird.

Wherefore, plaintiff in error, John Kenny, prays that said motion to dismiss this appeal be overruled and dismissed.

PAUL VAN WINKLE,
E. R. HASTINGS,
Attorneys for John Kenny, Plaintiff in Error.

STATE OF OKLAHOMA,
Oklahoma County, ss:

E. R. Hastings, being first duly sworn, deposes and says that he is one of the duly employed and authorized attorneys for John Kenny, the above named plaintiff in error; that the said John Kenny is not within Oklahoma County, State of Oklahoma, at this time and that affiant makes affidavit as his attorney by reason of his absence and for the further reason that most of the matters set out and
297 stated in the within and foregoing response are within the personal knowledge of this affiant; that affiant knows the contents of the within and foregoing response and answer and that the matters and statements therein contained are true.

E. R. HASTINGS.

Subscribed and sworn to before me by the said E. R. Hastings, this 18th day of January, 1916.

LORENE MORRIS,
Notary Public.

My Commission expires January 19th, 1919.

298–311 STATE OF OKLAHOMA,
County of Oklahoma, ss:

In the Supreme Court of the State of Oklahoma.

No. 7708.

JOHN KENNY, Plaintiff in Error,

vs.

LABAN MILES, and JOHN L. BIRD, Administrator of the Estate of Lah-tah-sah; Osage Allottee, #256, Deceased, Defendants in Error.

E. R. Hastings, being first duly sworn deposes and says that he is one of the duly authorized and employed attorneys for the plaintiff in error, John Kenny; that on the 18th day of January, 1916, he duly served a copy of the within answer and brief upon H. P. White, attorney for defendant in error, Laban Miles, by placing said copy in an envelope, properly addressed to the said H. P. White at Pawhuska, Oklahoma, that being the regular and usual place of residence of the said H. P. White, and by placing sufficient postage on said envelope to carry same to its destination and depositing same in the United States mails.

E. R. HASTINGS.

Subscribed and sworn to before me by the said E. R. Hastings, this 15th day of January, A. D. 1916.

[SEAL.] LORENE MORRIS,
Notary Public.

My Commission expires January 19, 1919.

312 & 313 Endorsed: No. 7708. In the Supreme Court of the State of Oklahoma. John Kenny, Plaintiff in Error v. Laban Miles et al., Defendants in Error. Response and Brief Resisting Motion to Dismiss Appeal. Filed Jan. 18, 1916. William M. Franklin, Clerk. P. H. Van Winkle, E. R. Hastings, Att'ys for Plaintiff in Error.

314 In the Supreme Court of the State of Oklahoma.

No. 7708.

JOHN KENNY, Plaintiff in Error,

v.

LABAN MILES et al., Defendants in Error.

Answer of the Defendant in Error, Laban Miles, to the Petition for Rehearing of Plaintiff in Error.

Comes now defendant in error, Laban Miles, and for answer to petition for re-hearing, alleges and states:

First. That inasmuch as the plaintiff in error made his petition for re-hearing in the nature of a petition for re-hearing and brief in support of same, we beg leave to file answer in the same form, and

Second. That plaintiff in error has wholly failed to set forth any reason or ground for a re-hearing as provided by Rule 9 of this Honorable court in that:

(*a*) Plaintiff in error has wholly failed to show that some question, decisive of the case, duly submitted by the counsel has been overlooked by the court.

(*b*) Plaintiff in error has wholly failed to show that the decision is in conflict with an express statute or controlling decision to which the attention of the court was not called, either in brief or oral argument, or which has been overlooked by the Court.

(*c*) Plaintiff in error has wholly failed to set forth any controlling question, statute, or decision overlooked by the Court.

315 Third. That the plaintiff in error has wholly failed to set forth any question decisive of the case, that was not fully considered and passed upon by the Court.

Fourth. Plaintiff in error has wholly failed to show that the decision complained of is in conflict with any express statute or controlling decision to which the attention of the Court was not called, but instead, has reiterated statutes and decisions which were expressly called to the attention of the court both in brief and oral argument and fully considered and passed upon by the Court in rendering decision complained of.

Fifth. Plaintiff in error has wholly failed to set forth or show any question, statute, or decision not fully considered and passed upon by the court in rendering the decision complained of.

For the foregoing reasons, the petition for re-hearing should be overruled and denied.

In support of the foregoing, we beg leave to submit the following:

Counsel for plaintiff in error admitted during the course of oral argument before this Honorable court that the record shows the allotment of lands in question to have been made subsequent to the death of Lah-tah-sah, and insisted in oral argument and in brief and in reply brief that the fact that the said Lah-tah-sah died before

receiving the allotment made no difference, as there were but two classes of allotments, to-wit, homesteads, and surplus, and that restrictions against alienation were imposed upon both classes, whether the allotment was made to or on behalf of a member of the tribe after the death of such member, or during his or her life-time. However, counsel for plaintiff in error now seemed to desire to change their theory of the case, and insist that the allotments were
316 made to Lah-tah-sah in her life-time, and we assume, in an effort to detract attention from their change of theory, state that the defendant in error changed his theory of the case on appeal from that presented in the trial court, but the record does not bear out this statement, and defendant in error has not changed his theory, and does not desire to do so.

The case arose in the county court of Osage County on the final account of the administrator, wherein he alleged that the heirs of Lah-tah-sah were Laban Miles, the defendant in error, and John Kenny, the plaintiff in error, each being the heir to an undivided one-half interest in the estate (Record p. 12). On February 28th, 1914, the plaintiff in error, John Kenny, filed his exceptions to the final account of the administrator, and alleged that he was the sole and only heir at law of said Lah-tah-sah, and that Laban Miles was not an heir, and had no interest in the estate and prayed that the Court ascertain and determine that said Laban Miles was not an heir, and had no interest in said estate, and that said John Kenny was the sole and only heir, and entitled to the whole of the estate (Record p. 13). The plaintiff in error thus attempted to have the question of heir-ship adjudicated by the county court. The defendant in error insisted that this question had once been litigated between the parties, and could not again be litigated, and thereupon the defendant in error filed in the county court his plea of res adjudicata, alleging that the question of heirship had been decided by the District Court of Osage county, Oklahoma, and pleaded the judgment of the District court as a plea of res adjudicata, and as final and conclusive as to both parties on the question of the heirs of said Lah-tah-sah, deceased, and the portion of the estate inherited by each (Record pp. 14-19). To this petition plaintiff in error filed a demurrer (Record p. 20), which demurrer was by the court overruled (Record p. 21). Thereafter on the 12th day of March, 1914, the plaintiff in error, John Kenny, filed an answer in the county court to the plea of res adjudicata of the de-
317 fendant in error, and for answer alleged:

First, a general denial.

Second, alleged that the defendant in error, Laban Miles was never married to his mother, Lah-tah-sah, deceased, or became her husband, or heir, and,

Third, alleged that the District Court of Osage County, Oklahoma, was without jurisdiction to render any judgment in the partition suit for the reason that the lands therein described were restricted lands (Record p. 23).

Thus, the plaintiff in error, sought, First, to re-litigate the question of the marriage of his mother and the defendant in error, Laban

Miles, and Second, sought to establish that the lands involved in the partition suit were restricted Osage Indian lands, which raised the very question in the county court, that his Honorable Court has passed upon, and decided in the decision complained of.

On appeal from the county court to the district court of Osage county, the same questions were presented and passed upon by the district court adverse to the contentions of the plaintiff in error.

On appeal to the Supreme Court, this Honorable Court again passed on this question adverse to the contentions of the plaintiff in error.

Counsel for plaintiff in error state in substance that, inasmuch as Lah-tah-sah, deceased, was given an allotment number, to-wit, #256, that this court should consider that fact as evidence that the allotment was made to her in her life-time. In reply to this, we state that the court will recall that section one of the Osage Division Act quoted by plaintiff in error in his petition for re-hearing fixes the roll of membership of the Osage tribe of Indians as it existed on the first day of January, 1906, providing that added thereto should be the names of all children born between January 1st, 1906 and July 1st, 1907, to members whose names were on the roll on January
1st, 1906. This fixed the legal membership, as shown by
318 said roll as of January 1st, 1906, including children born as
stated, and all persons whose names were included on the legal roll, were entitled to share in the division of the lands and funds of the Osages, in case they were living when the division was made, and, in case any such member died subsequent to January 1st, 1906, and before receiving his allotment, his right to the allotment and to the moneys of the tribe descended to his heirs under section six of said Act. The court will also recall the fact that the Osage Division Act was not passed and approved until June 28th, 1906, or six months after the date on which the roll was fixed, and that members of the tribe whose names were on said roll on January 1st, 1906, but who dies subsequent to that date, and before the passage of the Act June 28th, 1906, were entitled to share in the division of the lands and funds of the Osages, a and this right descended to their heirs, and, as a matter of fact, a number of the Osages died during this six months' period. The record now on file in the Supreme Court of the State in #2626, The Levindale Lead and Zinc Mining Company vs. Charles Coleman, the decision in which was reversed by the United States Supreme Court, states pp. 71-2, shows that Joseph Coleman died on the 27th day of February, 1906. This was four months before the passage of the Osage Division Act, yet Joseph Coleman was given an allotment number, to-wit, #2098.

Same record and pages show that Mary Coleman, the mother of Joseph Coleman, died February 28th, 1906, four months before the passage and approval of said division act, yet she was given an allotment number, to-wit, #580. In the case #7742, Fowler vs. Rogers et al., now pending on appeal in the State Supreme Court, shows that Ella Rogers was a member of the Osage tribe of Indians whose

name appeared on the roll January 1st, 1906, and that she
319 died on March 15th, 1906, more than three months before the Osage Division Act was passed and approved. Yet she was given an allotment number, to-wit #1804. The fact that the three Osages just mentioned were given allotment numbers is not evidence that they received allotments in their life-time, and counsel for plaintiff in error would hardly contend that a member of the Osage tribe of Indians could have received an allotment under the provisions of the Osage Allotment or Division Act three or four months before the passage and approval of said Act.

Section 12 of the Osage Division Act reads as follows:

"That all things necessary to carry into effect the provisions of this Act not otherwise herein specifically provided for shall be done under the authority and direction of the Secretary of the Interior."

By virtue of Section 12 just quoted, the Secretary of the Interior was given authority to do all things necessary to carry into effect the provisions of the act not specifically provided for by the act, and the facts are that, as an aid to carrying into effect the provisions of the act, the roll was made up as provided by Section One of the act, which includes the names of all persons whose names were on the annuity payment roll January 1st, 1906, and the names of all children born to such members between January 1st, 1906, and July 1st, 1907, and a number was set opposite the name of each person placed upon said roll. This roll was approved by the Secretary of the Interior, and constitutes the approved roll of the membership of the Osage tribe of Indians. When this roll was made up and this number given, it included the names of all persons entitled to share in the division of the lands and funds of the Osages, whether living or dead at the time the said roll was made up.

320 Counsel for plaintiff in error argue that as the Osage Division Act provided for the settlement of the roll of the members of the tribe as of January 1st, 1906, that as to the members of the tribe whose names were on the roll January 1st, 1906, their share of the tribal properties become fixed as of January 1st, 1906. This is equivalent to saying that the provisions of the Division Act making provisions for the division of the tribal lands and funds were in the nature of a grant in præsenti and vested title in the individual of his or her pro rata share in acres of the lands as of January 1st, 1906. This contention, however, is refuted by the United States Supreme Court in Sizemore v. Brady, 235 U. S. 441, 59 L. ed. 308, wherein it is said:

"On the part of the maternal cousins it is contended that the provisions in the original agreement relating to the allotment and distribution of the tribal lands and funds were in the nature of a grant in præsenti, and invested every living member of the tribe and their heirs, designated in the tribal law, of every member who had died after April 1, 1899, with an absolute right to an allotment of lands and a distributive share of the funds, and that Congress could not recall or impair this right without violating the due process of law clause of the 5th amendment to the Constitution. To this we can-

not assent. There was nothing in the agreement indicative of a purpose to make a grant in præsenti. *On the contrary, it contemplated that various preliminary acts were to precede any investure of individual rights. The lands and funds to which it related were tribal property, and only as it was carried into effect were individual claims to be fastened upon them.* (Italics ours.)

Also, in the case of Woodward vs. De Graffenried, 238 U. S., 284, 59 L. Ed. 1310—reading on 1327, the Supreme Court of the United States said:

"In our opinion the equitable title to the Agnes Hawes allotment was vested in her heirs according to Creek law by the clear meaning of paragraph 28, which says: 'All citizens who were living on the first day of April, eighteen hundred and ninety-nine, entitled to be enrolled—shall be placed upon the rolls—and if any citizen had died since that time—before receiving his allotment of lands and distributive share of all the funds of the tribe, the lands and money to which he would be entitled if living shall descend,' etc.

321 *'Although she had been placed in possession of an allotment, she had not in her lifetime 'received' it, in the sense of the Agreement, for this contemplated ownership in fee, and she had received* only a provisional surface right. *Besides, while in paragraph 6 in confirming the allotment brought it under those provisions of the Agreement that contemplated a patent in fee,* it was still only a partial dividend out of the property of the tribe."

In this opinion the court further said:

"It is perhaps unnecessary to say that the subsequent issue of a patent to the 'Heirs of Agnes Hawes,' without naming them, conveyed the legal title to those persons upon whom the equitable title was conferred by the Original Agreement.

"The restrictions upon alienation contained in the Original Agreement did not apply to allotments made on behalf of deceased members of the tribe. Skelton v. Dill, 235 U. S., 206, 210 ante, 198, 200, 35 Sup. Ct. Rep. 60."

Also the Circuit Court of Appeals, Eighth Circuit, in the case of Welty vs. Reed, 231 Fed. 930, said:

"The one and only question involved in the present case is whether the heirs of Thomas Knight had power to alienate the allotment originally made in the name of their father (who died prior to the taking effect of the original Creek allotment) but which was subsequently confirmed by patent in them prior to August 8, 1907, which is the date of the expiration of the five-year period of restriction imposed by the Original and Supplemental Creek Agreements. In other words, do the restrictions of those agreements apply in a case where an allotment was made in the name of a father, who died prior to the Original Creek Agreement and before a patent was issued to him, whose heirs afterwards received the patent directly therefor?

"This case was heard by this court at its December term, 1914, and a decision was reached reversing the judgment of the district court and sustaining the contention of the defendant Welty. Welvy v. Reed, 219 Fed. 864, 135 C. C. A. 534. Afterwards, the attention of the court being called to the decision of the Supreme Court in the case of Woodward v. De Graffenried, 238 U. S., 284, 35 Sup. Ct. 764, 59 L. Ed. 1310, which had not appeared prior to the decision or the present case by this court, we sustained a motion for a rehearing. The Woodward Case has now been carefully and critically considered, and in our opinion it presents a case altogether similar in its facts to the case now before us. In it the points now relied upon by opposing counsel in support of their respective contentions in this case where given exhaustive consideration by the Supreme Court, and that court held with the contention of the appellee that *an allotment made to a Creek Indian in his life-time, who afterwards received a patent for the land, took only a provisional surface right, and that such allottee had not been placed in possession of an allotment, or had not 'received an allotment'* as contem-
322 plated by section 7 of the Original Creek Agreement, or section 16 of the Supplemental Creek Agreement, *and that as a result the final allotment and patent made to the heirs of such allottee did not subject them to any of the restrictions against conveyances of their land found in these sections.*" (Italics ours.)

We agree with the statement of counsel for plaintiff in error in their reply brief, page 11, where they say:

"Partition is a form of alienation, in the course of which the interests of each is excluded from the whole and made exclusive in a part, or the whole is sold, divesting the Indian title altogether."

The Osage Division Act provided a plan, method, or scheme, the main object of which was to divide or "partition" the lands and funds of the Osage, whereby the title of the United States and the Osage tribe of Indians was to be "excluded from the whole" and title of each individual members of the tribe, or his heirs, made "exclusive in a part." This was accomplished by the execution of deeds by the principal chief for the Osage, approved by the Secretary of the Interior as per Section 8 of the Osage Division Act which provides:

Section 8. "All deeds to said Osage lands or any part thereof shall be executed by the principal chief for the Osages, but no such deeds shall be valid until approved by the Secretary of the Interior."

As was said in Sizemore v. Brady, supra, the Osage Division Act contemplated that various preliminary acts were to precede any investure of individual rights. The land and funds to which it related were tribal property, and only as it was carried into effect were individual claims to be fastened upon them.

The fourth paragraph of Section 2 provides inter alia with respect to homestead that the "certificate of allotment and deed shall desig-

nate the same as a homestated." But no "certificates of allotments" were ever made or issued.

The sixth paragraph of Section 2 provides inter alia that
323 "The schedules of said selections and divisions of lands herein provided for shall be subject to the approval of the Secretary of the Interior."

If certificates of allotment had, in fact, been issued, and if a member could be said to have received an allotment upon receipt of such certificate, yet plaintiff in error would not be benefited thereby, because such allotment certificate could not have been issued before the approval of the schedule of selections (of members) and divisions (of remaining lands by the Commission) by the Secretary of the Interior. The schedule of the first, second and third selections was not approved by the Secretary of the Interior until November 19, 1908, three months after the death of Lah-tah-sah, and the schedule of "Final Division" was not approved by the Secretary until August 2, 1909, nearly one year after the death of Lah-tah-sah, who died August 19, 1908.

Only two schedules were made out—one schedule embracing the first, second and third selections, and the second schedule embracing the final division of the remaining lands made by the allotting commission.

We here quote from an official letter showing the date of the approval of these schedules:

(Copy.)

"DEPARTMENT OF THE INTERIOR,
WASHINGTON, June 9, 1913.

MY DEAR MR. DAVENPORT:

I have the honor to acknowledge the receipt of your letter of June 2, inclosing a communication from Mr. George B. Denison, of Vinita, Oklahoma, requesting to be advised when—the schedule of allotments containing the name of Cena June, allottee No. 581, was approved by the Secretary of the Interior.

In reply you are advised that the files of the Indian Office show that—the schedule of the first, second and third selections containing the name of Cena June, allottee No. 581, was approved by the Assistant Secretary on November 19, 1908; and the schedule of "Final Division" of lands to the Osage Indians was approved by the Acting Secretary of the Interior on August 2, 1909.

Mr. Dennison's letter is returned herewith.

Very truly yours,
(Signed) LEWIS C. LAYLIN,
Assistant Secretary.

Hon. James S. Davenport, House of Representatives."

324 A joint resolution of February 27th, 1909 (35 Stat. L. 1167) provides that homesteads of members of the Osage tribe

may consist of land designated of any one or more of the first three allotment selections. This conclusively shows that up to February 27, 1909, the matter of selecting and designating homesteads was yet an open question, and that after February 27th, 1909, the homestead might be designated from any one or more of the first three selections. This was six months after the death of Lah-tah-sah.

The seventh paragraph of section 2 provides for the issuance by the Secretary of the Interior of certificates of competency to members "authorizing him to sell and convey any of the lands deeded him by reason of this Act, except his homestead.

This paragraph further provides:

"That upon the issuance of such certificate of competency the lands of such member, except his or her homestead, shall become subject to taxation, and such member, except as herein provided, shall have the right to manage, control, and dispose of his or her lands the same as any citizen of the United States."

It follows from the foregoing that a member of the tribe to whom a certificate of competency is issued, is authorized to convey only lands that were deeded him by reason of said act; that upon the issuance of said certificate of competency, the lands of such member (lands deeded to such member) shall become subject to taxation, and the member shall have the right to manage, control and dispose of his or her lands (the lands deeded to him or her) the same as any citizen of the United States. The lands, however, did not become the lands of such member, and such member was not authorized to convey same until after such lands were "deeded him by reason of this act." In other words, "the interest of each" was not "excluded from the whole and made exclusive in a part" until the deeds provided for by said act were executed by the principal chief and approved by the Secretary of the Interior. In the instant case, the first deed on behalf of Lah-tah-sah, deceased, was dated and executed
325 by the principal chief on September 23, 1908, more than thirty days after the death of Lah-tah-sah, and was not approved by the Secretary of the Interior and did not become effective until February 20, 1909, (Record p. 97). The second deed executed on behalf on Lah-tah-sah was dated and executed by the principal chief on the fifth day of May, 1909, (Record p. 95). These deeds were introduced in evidence in the court below by the plaintiff in error. In the language of the Supreme Court of the United States in Sizemore vs. Brady, supra, "The lands and funds to which it (the Act of Congress) related were tribal property, and only as it was carried into effect were individual claims to be fastened upon them" Although Lah-tah-sah, deceased, may have been living during a portion of the time that the preliminary acts looking toward the investure of title in the individual were being taken, yet, in the language of the United States Supreme Court in Woodward vs. De Graffenried, supra, "she had not in her life-time received it, for this contemplated ownership in fee." The fee did not pass from the United States and the Osage tribe of Indians to the individual members of the tribe

entitled thereto, or their heirs, until the deeds provided for where executed and approved. Upon the death of said Lah-tah-sah on the 19th day of August, 1908, she had received no deed, and no title had vested in her to any specific portion of the lands belonging to the Osage. Upon her death, her right to acquire title to the lands in question descended to her heirs, and on the subsequent execution and approval of the deeds in question, the title thereto vested in her heirs.

No trust period was provided for by the Osage Division Act during which the United States was to hold the lands of the Osage in trust for the individual members of the tribe, at the expiration fee patents were to issue, but on completion of all preliminary acts title to his or her fair share thereof in acres was to be vested in each member of the tribe, as shown by the approval roll, of his or her heirs,
326 to be conveyed by deed, as provided in said act. Each deed executed by the principal chief, and approved by the Secretary of the Interior, as provided by said act, contained, among other things, the following:

"Now therefore, I, the undersigned Principal Chief of the Osage tribe of Indians, by virtue of the power and authority vested in me by the said act of Congress have granted and conveyed, and by these presents do grant and convey, unto the said —, all right, title, and interest of the United States and the Osage Tribe of Indians in and to the following described lands situated on the Osage Reservation in Oklahoma, to-wit: * * * to have and to hold the same unto the said —, his heirs, executors, administrators and assigns, forever."

When such deed or deeds were executed by the principal chief, and approved by the Secretary of the Interior, on behalf of a mmber of the Osage tribe of Indians during his or her life-time, such member thereupon became an allotted Osage Indian and not before.

The contention of counsel for plaintiff in error that if the lands in question were unrestricted the county court acquired no jurisdiction in the proceedings for the appointment of an administrator is too frivulous to merit mention. It is sufficient to say that the lands in question, being unrestricted, came under the jurisdiction of the county court for distribution to the heirs the same as any lands in the state of any county of the state may come under the probate jurisdiction of the county court of that county. But if the lands in question were in fact restricted lands (which we do not admit) they would come under the jurisdiction of the probate court of Osage county by virtue of Sec. 3 of the Act of Congress approved April 18, 1912.

The Petition for the appointment of an administrator (Rec. p. 3) in addition to the lands alleged that the estate consisted in part of trust funds (which amounted to nearly $4,000) and oil and gas royalties of about $600.00 per year. This petition was filed July 8, 1912 (Rec. reverse side of p. 3) at which time Lah-tah-sah had been dead nearly four years, and about $2,400.00, in oil and gas
327 royalties had accumulated so that the personal property amounted to about $8,000.00, and therefore, so far as con-

ferring jurisdiction on the court to administer the estate, it was not necessary to mention the lands at all in the petition. The fact that Grinstead, Mason & Scott, att'ys for the administrator and the petitioner for the appointment of him, stated in the petition that he estate consisted in part of "Land allotted to her as a member of the Osage Tribe of Indians" is immaterial. It is not an allegation even that such allotment was made to her while living, or during her lifetime in her own right. The petition was filed three years after the execution and approval of the deeds in 1909, and four years after the death of Lah-tah-sah and the substance of the allegation in the petition for the appointment of an administrator that the allotment deeds were made out to Lah-tah-sah as if she was living, but that in fact she was dead at the time, alleging "that Lah-tah-sah departed this life at Pawhuska in the County of Osage and State of Oklahoma, on or about the 19 day of August, A. D. 1908", and that the lands on July 8th had passed to the heirs and constituted a part of the estate to be administered.

Counsel for plaintiff in error quote in full, on page 2 of their petition for rehearing, paragraph 1 of the petition for "partition" wherein it is stated:

"That by a deed dated September 28, 1908, recorded Mar. 2, 1909, in Book 1 of Homestead Deeds, page 247, in the office of the Register of Deeds for Osage County, Oklahoma, there was conveyed to Lah-tah-sah the following tract of land in Osage County, to wit"; (Describing the land) and

That by a deed dated May 15, 1909, recorded August 10, 1909, in Book 1 of Allotment Deeds, page 282, in the office of the Register of deeds for Osage County, Oklahoma, there was conveyed to Lah-tah-sah the following tracts of land in Osage County, to wit" (Describing the lands.

328 But they carefully refrained from quoting the first three lines of paragraph 2 of the same petition which read:

"That on or about the 19th day of August, 1908, Said Lah-tah-sah died intestate, leaving surviving her Laban Miles, husband, plaintiff, and John Kenny, an only child, the defendant. There is no allegation in the petition that Lah-tah-sah died seised of the lands in question, but the allegation is, bearing in mind the dates pleaded, that the lands in question were "by a deed dated September 28, 1908, recorded Mar. 2, 1909" and "by a deed dated May 15, 1909, recorded August 10, 1909, there was conveyed to Lah-tah-sah" the lands in question; that said Lah-tah-sah died on or about the 19th day of August 1908, or before the conveyances were made, dated, approved or filed for record; that plaintiff and defendant were the owners thereof and prayed for partition of same.

In conclusion we insist that the decision rendered in this case is correct, that the lands in question were not distributed to and that no title thereto had vested in Lah-tah-sah, the deceased member, during her lifetime, but that same passed to her heirs under the provisions of the Osage Division Act approved June 28, 1906, Sec. 6 of which put the laws of descent of Oklahoma into effect respecting

said "lands moneys and mineral interests;" that there was no distinction made as to heirs and they may be white or Indian, members of the tribe or nonmembers; that the Supreme Court of the United States in The Levindale Lead and Zinc Mining Co. vs. Coleman supra held that no restrictions are imposed on lands inherited by a white person, an heir of a deceased member of the Osage tribe of Indians, where the member of the tribe died before title to the lands passed to such member, but descended to the heirs; that
329 there being no distinction made as to heirs the same rule must apply where the heirs are Indians and also members of the tribe as shown by the official approved roll; that the Supreme Court of the United States in the Coleman case supra said:

"Deeds to the Osage Lands were to be executed by the Principal Chief, but were not to be valid until approved by the Secretary of the Interior (Sec. 8), and it was further provided that whatever was necessary to carry into effect the provisions of the Act should be done under the authority of this officer (Sec. 12).

The form of the "Deeds to the Osage lands" "To be executed by the Principal Chief" was not prescribed by the Act, but this was done by the Secretary of the Interior "to carry into effect the provisions of the Act" and by the deeds the interests of the individual were "excluded from the whole and made exclusive in a part" and the individual member, or his or her heirs, became invested with title to "his or her fair share thereof in acres." If any member died before the lands were thus deeded same passed to his or her heirs free from restrictions upon alienation.

Respectfully submitted.

H. P. WHITE,
Att'y for Def't in Error, Laban Miles.

330 No. 7708. John Kenny, Pl'ff in Error, vs. Laban Miles et al., Defendant in Error. Answer to Petition for Rehearing. Filed in Supreme Court of Oklahoma, Jan. 27, 1917. William M. Franklin, Clerk. H. P. White, Pawhuska, Okla., Att'y for Def't in Error, Laban Miles.

331 In the Supreme Court of the State of Oklahoma.

Filed in Supreme Court of Oklahoma, Feb. 14, 1917. William M. Franklin, Clerk.

No. 7708.

JOHN KENNY, Plaintiff in Error,

v.

LEBANAN MILES, and JOHN L. BIRD, Administrator of the Estate of Lah-tah-sah, Osage Allottee, No. 256, Deceased, Defendant in Error.

Motion.

Application of Plaintiff in Error for Leave to File a Second Petition for Rehearing.

Comes now the plaintiff in error and for his application for leave to file a second petition for a rehearing herein, alleges:

That on, to wit, January 2nd, 1917, the Honorable Supreme Court Commission and this Honorable Court affirmed the judgment below.

That within due time this plaintiff in error filed his petition for a rehearing which was denied January 30th, 1917.

That plaintiff in error does not believe that said case and petition for rehearing received due consideration, and that there are fundamental as well as other errors in the record and judgment affirmed.

That said action was one in administration of the estate of one Lah-tah-sah, deceased, Osage Indian Allottee No. 256, involving lands allotted to her as such Indian in Osage County.

332 That the county court, and the district court of Osage county on appeal from the county court, held that defendant in error was an heir and distributed to him one half of such lands.

That the case was tried below on the theory that they were the lands belonging to the estate of deceased; but if such, they were restricted lands and plaintiff in error would not be bound by a former judgment in partition adjudging one half of these lands to Laban Miles, which was pleaded by Laban Miles in this administration proceedings, and held by the court below to be res adjudicata of the same issues in the administration proceedings, which error would entitle plaintiff in error to a reversal of said judgment.

But the Honorable Commission without evidence found, and the judgment below was affirmed upon the theory, that the lands were not allotted to the deceased in her life time and therefore not the lands of a deceased Osage Allottee, and not restricted, and for that reason the plea of res adjudicata was good.

That such findings and affirmance of such judgment is contradictory and contains the fundamental error of affirming a judgment below distributing lands jurisdiction over which was acquired be-

cause they were the lands of the deceased, upon the theory that they were not restricted because they were not allotted to the deceased, and therefore not her lands.

For these and the other reasons set out in the proposed petition for rehearing hereto attached, plaintiff in error prays this Honorable Court for leave to file such attached petition for rehearing as his second petition for rehearing herein.

JOHN EMBRY,
EMBRY, CROCKETT & JOHNSON,
Attorneys for Plaintiff in Error.

333 In the Supreme Court of the State of Oklahoma.

No. 7708.

JOHN KENNY, Plaintiff in Error,

v.

LABAN MILES, and JOHN L. BIRD, Administrator of the Estate of Lah-tah-sah, Osage Allottee, No. 256, Deceased, Defendants in Error.

Petition for Rehearing.

Comes now the plaintiff in error and files this, his second petition for re-hearing herein, and asks the Court to consider the same, not only for the formal reasons hereinafter given, but for the obvious and fundamental error in affirming the judgment in this case by the Honorable Supreme Court Commission, and by this Court, for the reason that the proceeding herein is a proceeding of administration on the estate of Lah-tah-sah, Osage Allottee No. 256, deceased, who was a full-blood Osage Indian woman, and the judgment of the lower court so affirmed by the judgment of the Honorable Supreme Court Commission was a judgment distributing certain lands of the said Lah-tah-sah, as a part of her estate, and the judgment was affirmed on the theory that such lands did not belong to her estate and therefore were not subject to restriction. It presents the fundamental error and contradiction of affirming the judgment distributing lands belonging to Lah-tah-sah on the theory that such lands did not belong to Lah-tah-sah; and we submit that in justice to plaintiff in error such a contradictory and obviously fundamental error should not be permitted to stand.

334 Second. For further grounds for re-hearing, plaintiff in error alleges and shows that the following questions of both fact and law decisive of the case were duly submitted by counsel for plaintiff in error and were overlooked by the Court; and the decision affirming the judgment below is in conflict with the express statutes and controlling decisions which have been overlooked by the Court:

(*a*) The following questions of fact decisive of the case was duly submitted by counsel to the court and was overlooked by the Court:

"This is a contest of the heirs to the estate of a deceased Osage Indian allottee. Lah-tah-sah, the deceased, was a full-blood Osage Indian woman, who died in Osage County, where she had been allotted lands, without receiving a certificate of competency, or having her restrictions removed. Plaintiff in error, her son, who is also a non-competent Osage Indian, survived her and is her only heir-at-law, unless the defendant in error, Laban Miles, who is also a non-competent Osage, was the husband of the deceased, which is disputed; and this is an appeal from the district court of Osage county, adjudging Laban Miles an heir.

"The defendant in error, John L. Bird, was appointed and acted as administrator of the estate of the deceased. His account has been approved and he has no interest in the real issues involved. In the course of the administration of the estate in the county court of Osage County, the final report of the administrator was filed, praying distribution of the residue of the estate, consisting of the allotments of the deceased, and about $200 derived from rentals thereof, and alleging his information that said John Kenny and said Laban Miles were the heirs of decedent and entitled to inherit equally. Whereupon, the plaintiff in error filed his motion (record 13), alleging that he was sole heir and excepting to the suggestion that Laban Miles was an heir, and asking a hearing thereon. To this, the defendant in error, Laban Miles, filed by way of response, a plea of res adjudicata (Record 14), alleging, in substance, that on April 25, 1913, the District Court of Osage County, special Judge Boone presiding, in a partition action therein in which the same Laban Miles was plaintiff and the same John Kenny was defendant, rendered a judgment adjudging that the said Laban Miles was married to and was the husband of the deceased at the time of her death, and decreeing partition of such allotments, one-half to Laban Miles and one-half to John Kenny, and that such judgment has not been appealed from, but has become final, and was res adjudicata of the issues in the County Court, to which plea plaintiff in error filed a demurrer." See plaintiff in error's brief, pages 1-3.

335 Then, on pages 16 and 17 of said brief, plaintiff in error sets out the petition of Laban Miles on which said judgment of partition was rendered, in which it was recited in effect that the said John Kenny and Laban Miles were the sole heirs of Lah-tah-sah, Osage Indian Allottee No. 256, deceased; that by deed Dated September 28, 1908, recorded March 2, 1909, in Book 1 of Homestead Deeds, page 247, in the office of the Register of Deeds for Osage County, Oklahoma, there was conveyed to Lah-tah-sah, the following tract of land, in Osage County, Oklahoma; and then describing the land. And that by a deed dated May 15, 1909, recorded August 10, 1909, in Book 1 of Allotment Deeds, page 282, in the office of the Register of Deeds of Osage County, Oklahoma, there was conveyed to Lah-tah-sah, the following tracts of land in Osage County, Oklahoma; and then describing the lands. And that on or about the 19th day of August, 1908, the said Lah-tah-sah died intestate, leaving surviving her, Laban Miles, husband, and John Kenny, only child; that the said Laban Miles and John Kenny were the only

heirs-at-law of said Lah-tah-sah, deceased, and on her death sai
estate vested one-half in Laban Miles, the plaintiff in that actio
and one-half in John Kenny, the defendant in that action.

Then, on pages 19-23 of said brief, plaintiff in error sets out
copy of the journal entry rendered by the District Court of Osag
county in said partition proceeding, which was attached to the pl
of res adjudicata of the said Laban Miles; and in which partitio
judgment the court found, among other things, that the said Lal
tah-sah, Osage Indian Allottee No. 256, died intestate on or abo
the 19th day of August, 1908, leaving an estate consisting in pa
of the lands described in plaintiff's petition; and, furthe
336 that the plaintiff, Laban Miles and defendant, John Kenne
above named, are the only heirs-at-law of said Lah-tah-sa
deceased, and, as such plaintiff Laban Miles owned an undivide
one-half interest in and to the lands allotted and deeded to sai
Lah-tah-sah, described in plaintiff's petition; that is, this plea of r
adjudicata filed by defendant in error in the administrative pr
ceeding upon the estate of Lah-tah-sah, deceased, set up a form
judgment in partition secured by the same Laban Miles in th
District court of Osage county, on the 24th day of April, 1913, i
which the said Laban Miles' petition had treated these lands as th
lands of Lah-tah-sah and the court had judicially decided that Lal
tah-sah died intestate, leaving an estate consisting in part of thes
lands and that the said Laban Miles and John Kenny took eac
an undivided one-half of such lands as heirs of the said deceased

These questions were overlooked by the Honorable Supreme Cou
Commission, and they are decisive of this case, for the reason tha
the judgment in this case affirms a later judgment of the Distri
court rendered on appeal from the county court of Osage count
administering this estate, in which these same lands are distributed
as the estate of the deceased; and if these lands are part of the esta
of the deceased, then it necessarily follows that they were her allo
ment at the time of her death; and if they were her allotment
the time of her death, they are restricted lands of a deceased Osag
Indian allottee, coming under the provisions of the Act of Congre
of April 18, 1912, Section 6 of which provides:

"That from and after the approval of this Act, the lands of d
ceased Osage allottees, unless the heirs agree to partition the sam
may be partitioned or sold upon proper order of any court of com
petent jurisdiction, in accordance with the laws of the State of Okl
homa; provided, that no partition or sale of the restricted lands
the deceased Osage allottee shall be valid until approved by th
Secretary of the Interior."

337 Now, this judgment of partition, which was pleaded
res adjudicata in the administrative proceeding, was not a
proved by the Honorable Secretary of the Interior; and if the
lands are the restricted lands of a deceased Osage allottee, then th
judgment in partition, not so approved, would not be res adjudica
of the issues in the county and District courts in the administrati
proceedings.

The defendant in error, Laban Miles, sinced the petition in th

county court for the appointment of an administrator of the estate of the said Lah-tah-sah, deceased, and in said petition recited that lands allotted to the said Lah-tah-sah as a member of the Osage Tribe of Indians is Osage county, Oklahoma, amounting to about six hundred (600) acres, were included in the estate left by the deceased. These are the same lands. And although duly presented, the facts that this was a proceeding in administration, and the appeal to this Honorable Court by plaintiff in error was from a judgment of the District Court, upon an appeal from the County Court of Osage County, distributing this same land as part of the estate of Lah-tah-sah, deceased, and that Lah-tah-sah died without receiving a certificate of competency, and that both John Kenny and Laban Miles are full-blood Osage Indians, without certificates of competency, and that such state of facts would make such lands the lands of the deceased Osage allottee within the meaning and intent of said section 6 of the Act of Congress of April 18, 1912, the Honorable Supreme Court Commission overlooked the question, that if such lands belonged to the estate of Lah-tah-sah, deceased, and for that reason came within the probate Jurisdiction of the County Court of Osage County, and of the District Court on such appeal, then they were restricted under said Section 6 of the Act of
338 Congress of April 18, 1912, [the Honorable Supreme Court Commission overlooked the question, that if such lands belonged to the estate of Lah-tah-sah, deceased, and for that reason came within the probate jurisdiction of the county court of Osage county, and of the District Court on such appeal, then they were restricted under said Section 6 of the Act of Congress of April 18, 1912,] and that the said partition proceeding, which has not been approved by the Honorable Secretary of the Interior as required by said section 6 of the Act of Congress of April 18, 1912, would not be res adjudicata of the issues in such administration. And the said Honorable Supreme Court Commission overlooked the fact that if such lands were the lands of Lah-tah-sah for the purpose of administration, as the said Laban Miles has affirmed in his petition for administration, and if such lands were part of the estate of the said Lah-tah-sah, deceased, as was found in said partition judgment pleaded as res adjudicata, then they were such lands as were referred to as restricted lands of a deceased Osage allottee in said Section 6 of the Act of Congress of April 18, 1912; and that it was a fundamental error and absurd contradiction for the Supreme Court to affirm a judgment of the lower court distributing these lands on the theory that they did belong to the estate of the deceased; by sustaining such plea of res adjudicata on the theory that they did not so belong to such estate and therefore were not restricted; and we submit that such is the legal effect of the order of this Honorable Commission affirming the judgment below.

(*b*) And, although duly presented, this Honorable Court, and the Honorable Commission, overlooked the case, and the effect of the case, of Aaron et al. v. United States, 123 C. C. A. 265, 204 Federal 943, in which the U. S. Circuit Court of Appeals for this circuit, with reference to a proceeding affecting the allotment of

Cena June, an Osage woman who died before receiving her deed, held:

339 "The agreed statement of facts, upon which the case was heard and the decree was found, contained a stipulation that under the act of June 28, 1906, Cena June, who was a duly enrolled member of the Osage Tribe of Indians in Oklahoma, received as her homestead allotment the lands last described and set forth as her homestead allotment in paragraph 2 of the amended bill, and * * * that said Cena June was duly allotted as a member of said Tribe said lands set forth as her surplus selection in the amended bill herein. Consequently, it is too late now for the appellants to claim that the selection, the designation of the homestead, and allotments, were not made until after the death of Cena June. The court below could not and did not hear or decide this case upon that theory, and this court may not. The fact that the deeds of these allotments were subsequently made to the heirs of Cena June after her decease is immaterial. When the allotment had been made, the equitable title, the right to the legal title, and the entire beneficial interest in these lands, subject to the restriction upon alienation imposed upon them by the Act of Congress at the time they were allotted, vested in the allottee, and the title to these allotments under the subsequent deeds to her heirs related back to and took effect at the time of the allotments. There is, therefore, no escape from the conclusion that the titles of the heirs to the homestead lands and the surplus lands of this allottee were subject to the respective restrictions imposed upon those classes of lands by the Act of June 28, 1906."

That is, the supreme court commission overlooked the fact and question, that the case at bar was prosecuted upon the theory that these lands were the lands of Lah-tah-sah, that the court rendering the judgment in such proceeding had jurisdiction of such lands only upon the theory that they were the lands of Lah-tah-sah, or belonged to her estate, and the fact that the very judgment pleaded as res adjudicata contained a judicial finding that these lands were of the estate of Lah-tah-sah, deceased, and came within the principle laid down in the Aaron case, and failed to apply the rule in the Aaron case, which is the only authoritative decision upon this state of facts. The decisions by the United States Supreme Court and other courts relative to allotments and inheritance under the law relating to the Five Civilized Tribes, and the recent decision of the United States Supreme Court in the Coleman cases, which was followed by the Honorable Supreme Court Commission in this decision, are not applicable to the facts in this case, as the litigation

340 affecting the lands of the Osage Indians, and as Coleman was a white man and not a member of the Osage Tribe of Indians, and therefore not within the protective policy of Congress with respect to such Indians.

Plaintiff in error submits that the finding of the Honorable Supreme Court Commission, that such lands were selected and allotted to Lah-tah-sah after her decease, is without any support whatever in the record, and that the fact that the deeds were not issued until

after Lah-tah-sah's decease is a matter wholly immaterial, as the deeds, when issued, related back; and that defendant in error is estopped to deny that these lands were selected and allotted to Lah-tah-sah in her lifetime by the fact that he asked that administration be had upon these lands as a part of the estate of Lah-tah-sah, and that he secured a determination in the partition proceeding that these lands were of the estate of the said Lah-tah-sah, and because this case was instituted and prosecuted below on the theory that these lands belonged to the estate of the said Lah-tah-sah, deceased, and that the judgment below can be affirmed only on the theory that these lands are part of the estate of Lah-tah-sah; and if part of her estate, then they are restricted lands of a deceased Osage allottee within the meaning of Section 6 of the Act of Congress above referred to, and said partition judgment was invalid until approved by the Honorable Secretary of the Interior, and not being so approved it was not res adjudicata of any issue in the administrative proceeding; and that because the lower court did hold that it was res adjudicata, did overrule the demurrer of plaintiff in error thereto, did strike out a portion of plaintiff in error's answer challenging the truth of such plea, and did permit defendant in error to introduce such partition judgment as conclusive of the issues in such administration, this plaintiff in error was greatly wronged and deprived of his rights under the laws of the United States and
341 the treaties of the Osage Tribe of Indians, and under the Constitution and the laws of the State of Oklahoma, and notwithstanding the first petition herein for rehearing was overruled, this Honorable Court should give plaintiff in error another hearing and should re-examine the whole case for the purpose of doing justice herein.

JOHN EMBRY,
EMBRY, CROCKETT & JOHNSON,
Attorneys for Plaintiff in Error.

If the Honorable Supreme Court will permit, we desire to suggest with reference to the foregoing, that the judgment of the court below should be reversed, either upon the theory that it had no jurisdiction of these lands because they were not of the estate of Lah-tah-sah, deceased; or if they belonged to the estate of Lah-tah-sah, deceased, they were restricted lands under the Act of Congress referred to, and it was error for the trial court to sustain the plea of res adjudicata and to cut off the right of the plaintiff in error to show that the said Laban Miles was not married to plaintiff in error's mother, as was done in this case. Because of that old judgment, which had not been approved by the Secretary of the Interior, this plaintiff in error, John Kenny, was denied the right in the administrative proceeding to show that he was the sole heir of his mother, that Laban Miles was not married to his mother, and that if Laban Miles were given one-half of that estate it would to that extent deprive John Kenny of what he was rightfully entitled to. This son and heir of Lah-tah-sah was denied the right in the administrative proceeding to impeach the claim of Laban Miles to one-

half the estate, because of this old partition proceeding, which, we submit, was started under and by virtue of the Act of Congress above referred to and which had no validity until approved by the
342 Secretary of the Interior; that in fact it was not a judgment at all, but merely an administrative proceeding in aiding the Secretary of the Interior in the administration of Indian affairs, and the court's proceeding being subject to executive review made such partition judgment a ministerial and not a judicial proceeding.

See United States v. Ferreria, 18 How. 41, 14 L. Ed. 42.
Gordon v. United States, 2 Wall. 561, 17 L. Ed. 921.
In the matter of Sambora, 143 U. S. 222, 37 L. Ed. 429.
LaAbia Silver Mining Co. v. U. S. 175 U. S. 455, 44 L. Ed. 234.
Muskrat v. U. S. 219 U. S. 346, 55 L. Ed. 246.
Cochran et al. v. Blank et al., 156 Pac. 324, — Okla.
Hope v. Foley, 157 Pac. 727, — Okla.
Tiger et al. v. Creek County, 146 Pac. 912, — Okla.

And even if the partition judgment did have judicial character, since it was subject to the approval of the Secretary of the Interior it was not final, and could not be pleaded as res adjudicata.

Bigelow on Estoppel, 64 65.
23 Cyc., 1128.

In the proceeding, and in our brief and oral argument, we admitted that the deeds were not issued until after the death of Lah-tah-sah, but we did not admit that the lands were not selected or allotted until after her death. The case was in court and the court claimed jurisdiction of the lands only on the theory that they were a part of Lah-tah-sah's estate, and the judgment could be affirmed with respect to these lands only on the theory that they were a part of Lah-tah-sah's estate, and if they were a part of Lah-tah-sah's estate, they were restricted lands within the meaning of the Act of Congress above referred to, making it necessary that the Secretary approve such a judgment in partition before it would have any
343 validity whatsoever; and we cannot understand how the Supreme Court Commission could allow the lower court to keep jurisdiction of these lands for the purpose of distributing them as the estate of the deceased, and affirming this judgment upon the theory that they were not of her estate and therefore not within the restriction of the above Act of Congress. We did contend, and still contend, that the Osage allotment act is essentially and radically different from the allotment legislation relating to the Five Civilized Tribes; that before such partition among the Osage members, the Tribe held the title to the Reservation in trust for the members; that it was then subject to restrictions against alienation without the affirmative consent of Congress; and that that restriction followed every particle of the land, however distributed to members of the Tribe, until it was removed by Act of Congress; and that the provisions of the Osage Act imposing restrictions should be construed to cover every part of the land so distributed to members of the

Tribe; and that either upon this theory, or upon the narrower theory that it must be allotted to the allottee before her death, these were restricted lands. If the restrictions existing and continued by the allotment act covered these lands, then our contention that they are restricted lands is correct, but if the restrictions exist only by virtue of the provisions of the allotment act and are imposed only upon lands allotted within the lifetime of the allottee, still these are restricted lands under the facts and admissions in this case, and should be so considered.

We submit that there is no logical theory upon which this administrative proceeding can be sustained as affecting these lands except they were allotted to Lah-tah-sah in her lifetime and were a part of her estate at her decease, and therefore restricted lands
344 touching which a partition judgment is of no validity until approved by the Secretary of the Interior, and these decisions relating to the legislation of the Five Civilized Tribes and to Coleman, a white man who heired an Osage allotment and who was not a member of the Osage Tribe and not within the manifest policy of Congress to protect Indians, are wholly irrelevant here, and we submit that we are so convinced of the fundamental error and contradiction involved in the affirmance of this judgment that we hope the Court will consider this petition for a rehearing, and will take this case up and re-examine it, as it involves an important question of law touching the restrictions, or law of restrictions, upon a large part of the lands in the Osage Indian Reservation, and so important that the decision of it should not be left permanent with so little consideration.

JOHN EMBRY,
EMBRY, CROCKETT & JOHNSON,
Attorneys for Plaintiff in Error.

Endorsed: No. 7708. In the Supreme Court of the State of Oklahoma. John Kenny, Plaintiff in error vs. Laban Miles, et al., Defendants in Error. Petition for Rehearing. Embry, Crockett & Johnson, Okla. City, Okla., Attorneys for p't'f in error.

345 In the Supreme Court of the State of Oklahoma.

No. 7708.

JOHN KENNY, Plaintiff in Error,

vs.

LABAN MILES et al., Defendant in Error.

Opposition of Defendant in Error to the Application of the Plaintiff in Error for Leave to File Second Petition for Rehearing.

We have carefully examined the application of plaintiff in error for leave to file a second petition for rehearing, and fail to find any

question or matter presented that has not been fully passed upon by the court in its consideration of the original case, and in overruling the petition for rehearing heretofore filed, considered, and overruled.

In this connection, we call the Court's attention to typewritten answer of the defendant in error to the petition for re-hearing, and kindly ask the court's consideration of same before leave is granted plaintiff in error to file a second petition for re-hearing.

The opinion rendered by the court on January 2d is a very able and well-considered opinion, and covers every question presented by counsel in their petition for re-hearing, which was overruled on January 30th, 1917, and covers every question presented by the second petition for re-hearing, leave to file which has been asked.

346 Counsel in their proposed second petition for rehearing insists that, if the lands in question were not allotted to Lah-tah-sah in her life-time, then same did not constitute a part of her estate. This contention is in direct conflict with the rule announced in the case of the Levindale Lead and Zinc Mining Company vs. Coleman, decided June 5th, 1916 U. S. A. D. v. Opinions 1915, p. 644. In the Levindale-Coleman case, Joseph Coleman, who was given the allotment number, 2098, died February 27th, 1906, and Mary Coleman, his mother, who was given the allotment before the passage and approval of the Osage Allotment or Division Act, but subsequent to January 1st, 1906, the date of the establishment of the roll. The lands here in question were of the estate of Joseph and Mary Coleman, and, as such, descended to their legal heirs, one of which was Charles Coleman.

To the same effect is the holding of the Supreme Court of the United States in Sizemore vs. Brady, 235 U. S. 441, 59 L. Ed. 308; Woodward vs. De Graffenried, 238 U. S. 284, 59 L. Ed. 1310; Skelton v. Dill, 235 U. S. 206, 59 L. Ed. 198; Mullen vs. United States, 224 U. S. 448, 56 L. Ed. 834. To the same effect is the holding of the Circuit Court of Appeals of the Eight- Circuit in Welty vs. Reed, in 231 Fed. 930.

The decision rendered by this court in the case at bar is a correct interpretation of the law, and is in harmony with the opinions of the Supreme Court of the United States in the cases just cited, and any other rule or holding would be in direct conflict with the rule announced by the Supreme Court of the United States.

We submit that no sufficient showing was made by plaintiff in error in his first petition for re-hearing to warrant granting
347 the same, and that said petition for re-hearing was properly overruled. We further submit that no sufficient showing has been made in the ten-ative second petition for rehearing to warrant permission being given for the filing of same, and therefore object to leave being granted for the filing of said proposed second petition for rehearing.

Respectfully submitted,

H. P. WHITE,
Att'y for Def't in Error Laban Miles.

Endorsed: 7708. Filed in Supreme Court of Oklahoma, Feb. 23, 1917. William M. Franklin, Clerk.

348 And thereafter, on June 6th, 1917, an order was made denying leave to file second petition for rehearing and correcting opinion, as follows:

Supreme Court, April Term, 1917, June 6th, 1917, Twenty-third Judicial Day.

No. 7708.

JOHN KENNY

vs.

LABAN MILES et al.

And now on this day it is ordered by the court that the application for leave to file second petition for rehearing in the above cause be, and the same is hereby denied, and the original opinion filed in said cause is withdrawn for correction, same is corrected and is hereby refiled.

349 Filed Jan. 2, 1917. William M. Franklin, Clerk.

Refiled June 6, 1917. William M. Franklin, Clerk.

Jan. 2, 1917, by the Court; Adopted in Whole.

In the Supreme Court of the State of Oklahoma, Supreme Court Commission, Division Number Three.

No. 7708.

JOHN KENNY, Plaintiff in Error,

vs.

LABAN MILES, and JOHN L. BIRD, Administrator of the Estate of Lah-tah-sah, Osage Allottee, No. 256, Deceased, Defendants in Error.

Syllabus.

1. The Act of Congress of June 28, 1906, c. 3572, 34 Stat. L. 539, placed no restrictions upon the alienation by heirs of inherited lands allotted and deeded in the right of a member of the Osage Tribe of Indians after his death, save only the mineral interests therein, reserved to the Tribe, individual disposition of which is expressly inhibited.
2. The purpose of the Act of Congress of April 15, 1912, 37 Stat. L. 86, c. 83, was not to impose restrictions upon alienation of Osage lands, but to authorize the conveyance of such of said lands to which restrictions had attached by reason of their allotment to living members of the tribe, who had subsequently died, leaving surviving them Indian heirs, members of the tribe, to whom certificates of competency were issued.

Error from the District Court of Osage County.

A. R. Musseller, Special Judge.

Action by John Kenney, plaintiff, against Laban Miles, et al., Defendants. Judgment for defendant and plaintiff brings error. Affirmed.

Edward R. Hastings, Paul Van Winkle, John Embry, Attorneys for Plaintiff in Error.

H. P. White, Attorney for Defendant in Error.

350 BLEAKMORE, *C.:*

Plaintiff in error seeks the reversal of a judgment of the district court of Osage County, rendered April 2, 1915, upon appeal from the county court of that county, ordering a distribution of the estate of a deceased member of the Osage Tribe of Indians, consisting of lands selected and patented in her name subsequent to her death, and certain proceeds arising from the rental thereof.

The decedent Lah-tah-sah, a member of the Osage Tribe, entitled to a distributive share of the tribal property by virtue of an Act of Congress approved June 28, 1906, (Stat. L. 935), died intestate in 1908, before receiving the same. After her death the lands involved were selected in her right and deeds therefor, approved by the Secretary of the Interior, were executed in her name as grantee, and recorded. These lands descended to her heirs according to the laws of the State of Oklahoma.

On February 28, 1913, Laban Miles, defendant in error, began an action in the district court of Osage County to effect a partition of said lands, alleging that he was the surviving husband, and John Kenney, the plaintiff in error, the only child of Lah-tah-sah, and that upon her death each succeeded to an undivided one-half of the lands thereafter allotted and patented in her name. To this petition John Kenney filed his answer and cross-petition, averring that he was the only heir of the decedent, the sole owner, in constructive possession of the premises, and entitled to the exclusive possession thereof; that the claim of Laban Miles constituted a cloud upon his title, etc., and prayed for relief accordingly. The sole controverted issue of fact in this action was the marriage of Laban Miles to Lah-tah-sah. The court after hearing evidence,
351 made elaborate findings of fact, determined such issue in favor of Miles, ordered partition of the lands, and appointed commissioners for such purpose. Later the administrator of the estate of Lah-tah-sah filed his final report in the county court of Osage County, praying a distribution of the portion thereof in his possession, consisting of the lands allotted in her name, and the income therefrom. John Kenney appeared in such proceeding and asserted that he was the sole heir of Lah-tah-sah, and entitled to the entire estate. Laban Miles responded, setting forth that such claim had been tried and finally determined by the district court

of Osage County in the partition action, and pleaded the judgment therein as conclusive of the rights of Kenny and himself to share equally in the distribution of said lands and proceeds. To this plea of res judicata, Kenny demurred. The demurrer was overruled, and upon hearing the property was ordered distributed equally between him and Miles. Appeal was had to the district court, with like result.

Both Kenny and Miles are members of the Osage Tribe and neither has received a certificate of competency.

The provisions of the Act of July 28, 1906, supra, are fully set forth in the opinion of the Supreme Court of the United States in Levindale Lead & Zinc Mining Co. v. Coleman (Co. App. Ad Sheet, July 15, 1916, p. 644), as follows:

"That act provided that the roll of the Osage Tribe as it existed on January 1, 1906, with the additions specified, should be the
352 roll of the tribe and constitute its 'legal membership.' Children born between January 1, 1906, and July 1, 1907, to persons whose names were on the roll on the first-mentioned date, 'including the children of members of the tribe who have, or have had, white husbands,' were to be recognized as members for the purpose of the division. (Sec. 1). All lands were to be divided 'among the members of said tribe, giving to each his or her fair share thereof in acres' as specifically set forth; that is, 'each member' as shown by the roll was to be allowed to make three selections of 160 acres each in the manner described. (Sec. 2.) Restrictions were imposed as follows:

" 'Each member of said tribe shall be permitted to designate which of his three selections shall be a homestead, and his certificate of allotment and deed shall designate the same as a homestead, and the same shall be inalienable and nontaxable, until otherwise provided by act of Congress. The other two selections of each member, together with his share of the remaining lands allotted to the member, shall be known as surplus land, and shall be inalienable for twenty-five years, except as hereinafter provided,' (Sec. 2, Fourth).

"After 'each member' has made the three selections the remaining lands of the tribe, except as stated, were to be divided 'as equally as practicable among said members by a commission to be ap-
353 pointed' (Sec. 2, fifth). The Secretary of the Interior in his discretion, at the request of any 'adult member of the tribe,' was to issue 'to such member a certificate of competency, authorizing him to sell and convey any of the lands deeded him by reason of his act, except his homestead, which shall remain inalienable and nontaxable for a period of twenty-five years, or during the life of the homestead allottee,' if, upon investigation, 'he shall find any such member fully competent' to care for his affairs. It was provided that upon the issuance of such a certificate of competency the lands of such 'member,' except homestead lands, should 'become subject to taxation,' and that 'such member,' except as provided, should have the right to 'manage, control and dispose of his or her lands the same as any citizen of the United States.' It was further provided that the surplus lands should be 'nontaxable' for the period

of three years from the approval of the act 'except where certificates of competency are issued or in case of the death of the allottee, unless otherwise provided by Congress' (Sec. 2, Seventh). Oil, gas, coal or other minerals 'covered by the lands' were 'reserved to the Osage Tribe for a period of twenty-five years' (Id. Sec. 3). All funds belonging to the tribe, and moneys accruing to it, were to be 'held in trust by the United States for the period of twenty-five years' from January 1, 1907, except as provided. The funds of the tribe, and moneys accruing from the sale of Kansas Lands, together with those due upon claims against the United States, were to be segregated and placed to the credit of the 'individual members' of the tribe 'on a basis of a pro rata division,' or 'to their heirs as hereinafter provided,' and such credit was to draw interest, to be 'paid quarterly to the members entitled thereto;' and the disposition of royalties from mineral leases was specially prescribed. (Sec. 4.) At the expiration of twenty-five years from January 1, 1907, the lands, mineral interests, and moneys held in trust by the United States were to be the absolute property of the 'individual members' of the tribe, according to the roll, 'or their heirs, as herein provided,' and deeds were to be issued accordingly (Sec. 5). Sections 6 and 7 are as follows:

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"Sec. 6. That the lands, moneys, and mineral interests, herein provided for, of any deceased member of the Osage Tribe shall descend to his or her legal heirs, according to the laws of the territory of Oklahoma, or of the state in which said reservation may be hereinafter incorporated, except where the decedent leaves no issue, nor husband nor wife, in which case said lands, moneys and mineral interests, must go to the mother and father equally.

" 'Sec. 7. That the lands herein provided for are set aside for the sole use and benefit of the individual members of the tribe entitled thereto, or to their heirs, as herein provided; and said members, or their heirs, shall have the right to use and to lease said lands for farming, grazing, or any other purpose not otherwise specifically provided for herein, and said members shall have full control of the same, including the proceeds thereof: Provided, That parents of minor members of the tribe shall have the control and use of said minors' lands, together with the proceeds of the same, until said minors arrive at their majority: And provided further, That all leases given on said lands for the benefit of the individual members of the tribe entitled thereto, or for their heirs, shall be subject only to the approval of the Secretary of the Interior.'

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"Deeds to the Osage lands were to be executed by the principal chief, but were not to be valid until approved by the Secretary of the Interior (Sec. 8), and it was further provided that whatever was necessary to carry into effect the provisions of the act should be done under the authority of this officer (Sec. 8). Regulations have been adopted by the Secretary of the Interior governing the leasing (under Secs. 7, 12) of lands 'allotted to Osage Indians.' These provide, among other things, that 'lands of deceased allottees may be leased

by the heirs jointly,' as stated. (Regulations 11, 12, approved October 25, 1910; 8, approved June 17, 1913.)"

By joint congressional resolution approved February 27, 1909 (35 Stat. at Law. 1167) it is provided:

"That homesteads of members of the Osage Tribe of Indians in Oklahoma may consist of land designated from any one or more of their first three allotment selections taken under the Act of Congress approved June twenty-eighth, nineteen hundred and six, entitled, "An Act for the division of the lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes,' the designation thereof to be subject to approval by the Secretary of the Interior."

356 By Sec. 6 of an Act of Congress of April 15, 1912, (— Stat. at L. —), it is provided:

"That from and after the approval of this act the lands of deceased Osage allottees, unless the heirs agree to partition the same, may be partitioned or sold upon proper order of any court of competent jurisdiction in accordance with the laws of the State of Oklahoma: Provided, That no partition or sale of the restricted lands of a deceased Osage allottee shall be valid until approved by the Secretary of the Interior. Where some of the heirs are minors, the said court shall appoint a guardian ad litem for said minors in the matter of said partition, and partition of said land shall be valid when approved by the court and the Secretary of the Interior. When the heirs of such deceased allottees have certificates of competency, or are not members of the tribe, the restrictions on alienation are hereby removed. If some of the heirs are competent and others have not certificates of competency, the proceeds of such part of the sale as the competent heirs shall be entitled to shall be paid to them without the intervention of an administrator. The shares due minor heirs, including such minor Indian heirs as may not be tribal members and those Indian heirs not having certificates of competency, shall be paid into the Treasury of the United States and placed to the credit of the Indians upon the same conditions as attach to segregated shares of the Osage national fund, or with the approval of the Secretary of the Interior paid to the duly appointed guardian. The same disposition as herein provided for with reference to the proceeds of inherited lands sold shall be made of
357 the money in the Treasury of the United States to the credit of deceased Osage allottees."

It is contended by plaintiff in error that the lands involved constitute the homestead and surplys allotment of a deceased member of the Osage Tribe, and by virtue of the foregoing congressional enactments are alienable only upon issuance of certificates of competency to the heirs.

Defendant in error insists that no restrictions upon alienation of the lands in question by the heirs of decedent ever existed, for the reason that such lands were not selected, nor a homestead therein

designated, by the deceased member of the tribe in her lifetime, but that such selection was made in her right and deeds therefor executed in her name after her death, and therefore such lands are neither homestead nor surplus, but constitute a separate and distinct class of allotment upon the alienation of which no restrictions were imposed by Congress.

As sustaining his contention, plaintiff in error relies upon United States vs. Aaron, 183" Fed. 347, affirmed by the Circuit Court of Appeals, 8" Circuit, in Aaron vs. United States, 204 Federal, 943, wherein it was held:

"1. Lands of full-blood Osage Indian allottees selected by and allotted to them before their decease were inalienable by their full-blood heirs in March, 1909, under the Act of June 28, 1906, c. 3572, 34 Stat. 539, 542, 541, where none of them had obtained certificates of competency.

"2. The homestead lands of such allottees were likewise inalienable by such heirs.

358 "The fourth paragraph of section 2 of the Act of June 28, 1906, c. 3572, 34 Stat. 541, provided that the homestead lands of Osage Indian allottees 'shall be inalienable and nontaxable until otherwise provided by Act of Congress.' The seventh paragraph of the same section declared that the Secretary might issue to any member of the Osage Tribe a certificate of competency, authorizing him to deed his lands, 'except his homestead, which shall remain inalienable and nontaxable for a period of twenty-five years, or during the life of the allottee."

The opinions in the case relied upon are not decisive of the question here presented, for the reason that the same was not involved or determined therein as shown by the language employed in the latter opinion, namely:

"But counsel for the appellants contend that no restriction upon alienation was ever imposed upon the lands here in question, because they were not selected by Cena June, nor did she designate her homestead therein and thus divide them into homestead lands and surplus lands, nor were they allotted to her before her decease, but they were selected and allotted to her heir after her decease, so that they constitute a different class of lands from either the homestead lands or the surplus lands, and are thus exempt from all restrictions upon their alienation under the decisions in Mullen v. United States, 224 U. S. 448, 452, 457, 32 Sup. Ct. 494, 56 L. Ed.

359 834, and Hancock v. Mutual Trust Company, 24 Okl. 391, 103 Pac. 566. A careful examination of the record, however, has satisfied us that the defendants are conclusively estopped from making this claim. The complaint alleged in its bill that a described part of the lands here in controversy was allotted to Cena June 'as the homestead of said Cena June, duly selected as and for such homestead,' and that a described portion of them was allotted to the said Cena June 'as her surplus lands.' The agreed statement of facts, upon which the case was heard and the decree was founded,

contained a stipulation that under the Act of June 28, 1906, 'Cena June, who was a duly enrolled member of the Osage tribe of Indians in Oklahoma, received as her homestead allotment the lands described and set forth as her homestead allotment in paragraph two of the amended bill,' and '* * * that said Cena June was duly allotted as a member of said tribe as the lands set forth as her surplus selection in the amended bill herein.' Consequently, it is too late now for the appellants to claim that the selections, the designation of the homestead, and the allotments were not made until after the death of Cena June. * * *."

In Levindale Lead & Zinc Mining Co. v. Coleman, supra, it is said:

"Taken in their natural sense, the provisions of the fourth paragraph of Sec. 2 apply only to allotments made to members of the tribe. There is nothing to suggest that a nonmember should
360 designate a 'homestead', and unless lands were thus segregated the restrictions as to 'homesteads', would not apply. With respect to 'surplus lands,' it will be observed that it is only selections of each 'member,' and the share of remaining lands 'allotted to the member,' which constitute lands so described and thus come under the stated restrictions. It was early ruled administratively that under Sec. 6 the right to the member's share, though unallotted in his lifetime, passed to his legal heirs as there defined, and this we assume to be the meaning of the statute. But the fact that the nonmember takes in the right of the deceased member is not enough to subject him to restrictions which are plainly imposed for the protection of members. It is urged that the restrictions, by virtue of their terms, were to run with the land until they expired by limitation or were removed (Bowling v. United States, 233 U. S. 528, 58 L. Ed. 1080, 34 Sup. Ct. Rep. 659), but restrictions would not run with the land unless they had attached. And, even where they had attached, they would run only according to the intendment of the statute. We find no indication of an intent that they should apply to lands, or an interest in ownership of white men who were nonmembers of the tribe. Emphasis is placed by the defendant in error on the provisions of Sec. 7 as to leases; but it would be an inadmissible construction of this section to say that the word 'heirs' was there used in contradistinction to 'members.' This provision as to leases, in the light of the purpose of the
361 Act, had reference, we think, to the 'individual members' who received allotments and the Indian heirs of such members.

"The view we have taken of the inapplicability of the restrictions upon alienation in a case like the present finds support in the fact that there was no provision for giving to nonmembers certificates of competency. Under the seventh paragraph of Sec. 2, any 'adult member' of the tribe, although a full-blood Indian, who could satisfy the Secretary of the Interior of his ability to transact his own business, might obtain a certificate and thus be enabled to dispose of

his 'surplus land;' but a competent white man, not a member, could not be relieved. It would seem to be evident, that such an incongr-ous result was not intended, the language plainly showing that Indians alone were deemed to be subjected to the restrictions."

It would seem that the only restriction placed upon alienation of the allotted lands of the Osage Tribe are found in the fourth paragraph of section two of the Act of June 28, 1906, supra, and "apply only to allotments made to members of the tribe."

The general scheme for division of the Osage lands was similar to that adopted for the distribution of those of the Five Civilized Tribes, contemplating, primarily, their allotment to living members of the tribe, separating the homestead and surplus and providing certain restrictions upon alienation and exemption from taxation, obviously for the better protection of the al-ottee in the quiet enjoyment thereof; but anticipating that such character of allotments would become impossible in the event of the death of members entitled thereto, Congress provided in such contingency
362 for allotments going immediately to heirs, in the right of such deceased members, of the shares of the tribal property to which they would have been entitled to receive had they survived. As to the latter class of allotments no provision was made for the segregation of the homestead and surplus, and no occasion for such separation existed, as each of said heirs, if a member of the tribe was provided with a homestead fully protected in his own right.

In neither the Osage Division Act nor the Allotment Act relating to the Five Civilized Tribes (save perhaps in one instance), was there a distinction made between heirs; they might or might not be members of the tribe, but each would take his undivided share under the particular Act in the same manner and with the same powers of disposition, unless otherwise expressly provided.

In Mullen v. United States, 224 U. S. 448, 32 Sup. Ct. 494, 56 L. Ed. 834, involving the Choctaw and Chickasaw Allotment Acts, it is said:

"It is true that under the Creek agreement, in cases where the ancestor died before allotment, the lands were to be allotted directly to the heirs, while under the Choctaw and Chickasaw agreement the allotment was to be made in the name of the deceased member, and 'descend to his heirs.' This, however, is a merely formal distinction and implies no difference in substance, in both cases the lands were to go immediately to the heirs, and the mere circumstance
363 that, under the language of the statute, the allotment was to be made in the name of the deceased ancestor instead of the names of the heirs furnished no reason for implying a requirement that there should be a designation of a portion of the land as homestead.

"We have, then, a case where all the allotted lands going to the heirs are of the same character, and there is no restriction upon the right of alienation expressed in the statute. Had the lands been

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allotted in the lifetime of the ancestor, one-half of them, constituting homestead, would have been free from restriction upon his death. The only difficulty springs from the language of paragraph 16, limiting the right of heirs to sell 'surplus' lands. But, on examining the context, it appears that this provision is part of the scheme for *allotments to living members, where there is a segregation of homestead and surplus lands respectively.* Whatever the policy of such a distinction which gives a greater freedom for the disposition by heirs of homestead lands than of the additional lands, there is no warrant for importing it into paragraph 22, where there is no such segregation. It would be manifestly inappropriate to imply the restriction in such cases so as to make it applicable to all the lands taken by the heirs, and there is no occasion or authority for creating a division of the lands so as to impose a restriction upon a part of them. (Italics ours.)

364 "There being no restriction upon the right of alienation, the heirs in the case involved in this appeal were entitled to make the conveyances. The bill alleged that the tracts embraced in these conveyances were 'allotted lands,' and certificates of allotment had been issued. These Indian heirs were vested with an interest in the property which, in the absence of any provision to the contrary, was subject of sale. The fact that they were 'full-Blood Indians makes no difference in this case, for, at the time of the conveyances in question, heirs of the full-blood, taking under the provisions of paragraph 22 of the supplemental agreement, had the same right of alienation as other heirs."

In the Mullen case, supra, the Supreme Court of the United States further says:

"While the lands were to be allotted in the name of the deceased they passed at once to his heirs, and as each heir, if a member of the tribe, was already supplied with his homestead of 160 acres, there was no occasion for a further selection for that purpose from the inherited lands. No distinction is made between the heirs; they might or might not be members of the tribe and where there were a number of heirs, each would take his undivided share.

365 It is quite evident that there is no basis for implying the requirement that in such case there should be a selection of portion of the allotment as a homestead, and all the lands allotted under paragraph 22 are plainly upon the same footing. While it appears from the record that, in the present case, separate certificates of allotment were issued for homestead and surplus lands, this was without the sanction of the statute."

In Skelton vs. Dill, 235 U. S. 206, 59 L. Ed. 198, construing the allotment Acts of the Creek Tribe it is said:

"Evidently anticipating that participation in the allotment and distribution might in some instances be cut off by death, Congress made provisions for such a contingency. * * *

"Whether these restrictions were intended to apply only to allotments made to living citizens in their own right, or to apply as well

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to allotments made on behalf of deceased members, is the question for decision. The supreme court of the state, when passing upon this case, held them applicable to both classes of allotments, but in the later case of Rentie v. McCoy, 35 Okla. 77, 128 Pac. 244, reached the other conclusion, as did also the district court for the eastern district of Oklahoma in Reed v. Welty, 197 Fed. 419. We think the better reasoning lies with the view that the restrictions apply only to allotments made to living citizens in their own right. Not only do the provisions of Sec. 16 of the supplemental act lend themselves to that view, but in those sections of both acts which
366 deal with allotments on behalf of deceased persons there is no suggestion of a restriction upon alienation. This difference in legislative treatment doubtless was deliberate, and reflects a corresponding difference in purpose. In Mullen v. United States, 224 U. S. 448, 56 L. Ed. 834, 32 Sup. C. Rep. 494, a like question arose under the original and supplemental acts relating to the Choctaw and Chickasaw lands, and we held that the restrictions upon alienation imposed by those acts were applicable to allotments to living members in their own right, but not to allotments on behalf of members then deceased. We do not perceive anything in the acts relating to the Creek lands which calls for a different conclusion. * * *"

We hold that the Act of June 28, 1906, placed no restrictions upon alienation by heirs of inherited lands allotted and deeded in the right of a member of the Osage tribe after his death, save only the interest in the minerals, reserved to the tribe, the individual disposition of which is expressly inhibited.

The evident purpose of the Act of April 15, 1912, supra, was not to impose restrictions upon alienation of Osage lands, but to authorize the conveyance of such of said lands to which restrictions had attached by reason of their allotment to living members of the tribe who had subsequently died, leaving surviving them Indian heirs, members of the tribe, to whom certificates of competency were issued.

In Levindale Lead & Zinc Mining Co. v. Coleman, it was said:

367 "* * * But it is the Act of 1912 upon which chief reliance is placed. This was 'supplementary to and amendatory of' the Act of 1906, and provides, among other things, in Sec. 6, relating to the lands 'of deceased Osage allottees,' that 'when the heirs of such deceased allottees have certificates of competency or are not members of the tribe, the restrictions on alienation are hereby removed.' We lay aside the suggestion that 'deceased Osage allottees' may be taken to mean only members who received allotments in their own right while living, expressing no opinion upon that point. For not only is a legislative declaration of the intent of a previous act not absolutely controlling, but we think that in the present instance the purpose of Congress is manifest. This suit had been decided in the district court of the state in December, 1910, and it had been there held that the restriction applied to nonmembers. The case had been appealed, but it may well be supposed that Congress intended to remove the restrictions upon a nonmember, if such

a restriction could be deemed to exist. That, we are satisfied, was the object of the provision, and it was not an attempt *ot* import into the earlier Act a restriction which lay wholly outside its express terms and the policy of guardianship it was intended to execute.

We conclude that the district court of Osage County had jusrisdiction to partition the lands involved, and that its judgment was conclusive of the rights of the parties in this proceeding to share equally in the disposition of the lands in question.

In view of this conclusion it is unnecessary to determine the very interesting questions presented by the briefs relative to the capacity in which the district court of Osage County would have acted and the conclusiveness of this judgment in the event it had been held that the lands in question were restricted lands such as contemplated by the Act of April 15, 1912, supra.

It follows that the judgment of the court below should be affirmed.

368 In the Supreme Court of the State of Oklahoma.

No. 7708.

JOHN KENNY, Plaintiff in Error,

vs.

LABAN MILES et al., Defendants in Error.

Certificate of Clerk.

I, William M. Franklin, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the foregoing pages, 1 to 246 and 248 to 298 and 312 to 368 constitute a full, true and correct copy of the record in the above cause as called for in copy of stipulation on file in this office appearing on the front of this transcript, as is made to appear by the records and files of this office.

In witness whereof, I hereunto set my hand and affix the seal of said Supreme Court, at Oklahoma City, Oklahoma, this 3rd day of July, A. D. 1917.

[Seal Supreme Court, State of Oklahoma.]

WILLIAM M. FRANKLIN, *Clerk.*
By NEAL ORR, *Assistant.*

Endorsed on cover: File No. 25,923. Supreme Court of the United States, October Term, 1917. Term No. 486. John Kenny, petitioner, vs. Laban Miles et al. Writ of Certiorari and Return. Filed July 9th, 1917. File No. 25,923.